649.

SUPREME COURT OF THE UNITED STATES.

No. 102.

JOHN L. SHAWHAN AND AL., APPELLANTS,

vs.

PERRY WHERRITT, ASSIGNEE, &c.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF KENTUCKY.

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UNITED STATES OF AMERICA,

Eighth circuit and district of Kentucky:

Pleas before the Hon. John Catron and Thomas B. Monroe, judges of the circuit court of the United States of America, in and for the district aforesaid, held at the capitol, in the town of Frankfort, at the November term thereof, A. D. eighteen hundred and forty-four.

Be it remembered, that heretofore, on the day of , A. D. eighteen hundred and forty-four, came John L. Shawhan, Benjamin Berrys, Daniel Shawhan, and others, by their counsel, into the court aforesaid, and filed the following record in an appeal from the district court of the United States for the district aforesaid, to wit:

Be it remembered, that heretofore, to wit, on the 10th day of August, A. D. 1843, came Perry Wherritt, assignee of the bankrupt estate of Benjamin Brandon, by Cates & Lindsey, esqs., his attorney, into the clerk's office of the court aforesaid, and filed the following bill in chancery, to wit:

To the honorable district judge of the United States, for the Kentucky district; Perry Wherritt, assignee of the estate of Benjamin Brandon, respectfully sheweth:

That, on the 22d day of November, 1842, the said Benjamin Brandon, on regular proceedings had in your honorable court, was deemed and held to be a merchant and trader within the perview of the bankrupt law of the United States, and to have committed acts of bankruptcy by making a fraudulent transfer of his property, and by secreting himself, to avoid the service of legal process, and thereupon was regularly decreed a bankrupt; that your complainant, who is a resident of Harrison county, in the district of Kentucky, in which county said Brandon also resided at the time of his bankruptcy, and still resides, was appointed assignee of said Brandon, and thereby fully entitled to all the property, and rights of property, belonging to said bankrupt at the time of his bankruptcy.

Your complainant further represents, that, at the time of the commission of the acts of bankruptcy aforesaid, the said Brandon was indebted to various individuals in large sums of money, as will be seen by the exhibit herewith filed, marked B, which is prayed to be taken as part of this bill.

Your complainant further represents, that, after the commission of the acts of bankruptcy aforesaid, the said Benjamin Brandon executed a deed of trust to Wm. A. Withers, viz., on the 6th day of April, 1842, by which he conveyed to said Wm. A. Withers all the property he then owned, except that which was exempted by law from execution, consisting of a tract of about 350 acres of land, in the county of Harrison,

on which said Brandon then resided; also five negroes, 2 wagons and teams, about 400 head of hogs, 15,000 pieces of coopers' stuff, all his stock of horses, cattle, and sheep, household and kitchen furniture, and farming utensils, his debts and choses in action of every kind and description; it being the intention, as expressed in said deed, to convey to said Withers all his property, real, and personal, and mixed, and choses in action, with the exception of the property exempt from execution, &c. All of which, together with the fraudulent purposes and intentions of said deed, will fully appear by reference to a copy thereof on file in the case of Lail vs. Brandon, in bankruptcy in your honorable court.

Your complainant further represents, that, after the execution of said deed of trust, and the avoiding of the service of legal process as aforesaid, John L. Shawhan, Benjamin Berry, and Isaac Miller, Greenup Rennington, George H. Perrin, Daniel Shawhan, and the President, Directors and Company of the Bank of Kentucky, of the district aforesaid, with a full knowledge of the acts of bankruptcy aforesaid, filed their bill in chancery in the Harrison circuit court, against said Benjamin Brandon, Wm. A. Withers, Catharine Snodgrass, John O. Hodges, Wm. Griffith, and John O. Williams, charging that said deed of trust, made as aforesaid, was fraudulent and void, the same giving preference to some of the creditors of said Benjamin Brandon; and in said suit the Bourbon circuit court, to which said suit was removed by change of venue, decreed the said deed void, and subjected the property therein to sale for the benefit of said Shawhan, Berry, &c.

Your complainant further represents, that the whole proceedings in said suits, in the circuit courts of Harrison and Bourbon, was illegal and void, as said complainants therein well knew of the commission of the acts of bankruptcy aforesaid by said Brandon, and that your honorable court had exclusive jurisdiction in such cases; and that in no event could any court legally decree a sale of the property of a bankrupt's creditors.

Your complainant further represents, that, under the directions of your honorable court, he proceeded to make an inventory, creditor list, &c., of the property and debts of said bankrupt, which are on file in your honorable court, and proceeded to take possession of such of the bankrupt's property as he could find, and did obtain possession of the tract of land aforesaid, and now has possession thereof; all of which was fully known to said Shawhan, Berry, &c., complainants and defendants in said suit. Yet they, disregarding the order of your honorable court, and intending to deprive the other creditors of the said Benjamin Brandon of their just and equitable rights, have proceeded, under the decree of the Bourbon circuit court aforesaid, so as aforesaid fraudulently obtained by them, to sell the aforesaid 350 acres of land, with its appurtenances, with the intention and design of appropriating the same to their own use, and not to the equal benefit of all the creditors of Benjamin Brandon; and John L. Shawhan became the purchaser of said land, knowing at the time, as well as all the aforesaid parties knew, that your complainant was in possession of said land, under the order

and decree of your honorable court, made in the aforesaid case of Lail vs. Brandon, and in violation of the restraining order granted by your honor in that case, of which they were fully advised.

Your complainant further represents, that said Shawhan, Berry, &c., caused to be sold a large amount of personal property, and negroes, belonging to the estate of said bankrupt, Benjamin Brandon, the same property described in the inventory made out and filed by your complainant in the aforesaid bankrupt case of B. Brandon, and of the value therein assessed and realized by a sale thereof, a large sum of money, viz: the sum of $ as will appear by a copy of the report of sale constituting part of exhibit B, filed herein.

Your complainant further represents, that said John L. Shawhan, threatening to disturb the possession of your complainant in the land aforesaid and to take the same from your complainant, and by his threats and false claims of title and right thereto, he is preventing your complainant from disposing of said land, as of right he ought, for a fair price, towards the payment of the debts of said bankrupt, B. Brandon. To the end that equity may be done in the premises, your complainant prays that said John L. Shawhan, Isaac Miller, Greenup Rennington, George H. Perrin, William A. Withers, Catharine Snodgrass, John O. Hodges, and John Williams, of Harrison county, and Benjamin Berry and Daniel Shawhan of Bourbon county, the President, Directors & Company of the Bank of Kentucky, at Louisville, all of the Kentucky district, and Benjamin Brandon, now of the State of Missouri, (William Griffith having deceased,) be made defendants to this bill, and be required to answer the same fully and particularly on their corporal oaths. And that said John L. Shawhan be required to file and exhibit his pretended claim to said tract of land for the examination and inspection of the court.

And on hearing, your complainant prays that said John L. Shawhan be compelled, by a decree of your honors, to surrender up to be cancelled any pretended claim, by deed or otherwise, he may have to said tract of land, and that your honor decree to your orator peace and quiet in relation to said pretended title under said fraudulent sale, and that your complainant may proceed to sell said land under your honor's decree of bankruptcy, &c.

Your complainant prays for all such equitable relief, general and special, as the merits of his case may require, &c. Your complainant prays the subpœna of your honorable court, directed to the marshal, &c.

PERRY WHERRITT, *Assignee, &c.*
By CATES & LINDSEY, *Attorneys.*

The following is the exhibit B, referred to in, and made part of, the foregoing bill, viz:

THE COMMONWEALTH OF KENTUCKY:
Harrison circuit court, clerk's office, sct:

Be it remembered, that among the records and files of the aforesaid office, are the following judgment creditors of Benjamin Brandon, to wit:

CALEB WALTON,
against
BRANDON & SHAWHAN.

Judgment rendered June term, 1842, for $173, interest from 25th December, 1840, till paid. Costs $6 13. Execution issued June 29, 1842, and delivered to sheriff 30th June, 1842, and returned 13th August, 1842. "No property found."

THE SAME,
against
THE SAME.

Judgment rendered June term, 1842, for $150 debt, interest from 25th December, 1838, till paid. Costs $6 13½ cents. Execution issued 5th July, 1842. Endorsed with a credit of $51 paid 4th April, 1840. Delivered to sheriff 5th July, 1842. Returned July 23d, 1842, "replevied." Execution issued on R. B. October 26th, 1842. Delivered to sheriff, not returned.

JAMES NESBITT,
against
BENJAMIN BRANDON.

Judgment rendered June, 1842, for $75 50 debt, with interest from the 2d November, 1840, until paid. Costs $6 13. Execution issued 27th June, 1842. Delivered to the sheriff same day. Returned 13th August, 1842, "no property found."

THE SAME
against
THE SAME.

Judgment rendered June term, 1842, for $91 80 cents, with interest from 12th August, 1840, till paid, and costs $5 50¼. Execution issued 27th June, 1842, and delivered to sheriff 27th June, 1842. Returned August 13th, 1842, "no property found."

THE SAME
against
THE SAME.

Judgment rendered June term, 1842, for $91 95 cents debt, with interest from the 12th March, 1842, till paid. Costs $6 13¼. Execution issued, delivered to sheriff, and returned with same endorsements as the foregoing, on the same dates.

THE SAME
against
THE SAME.

Judgment rendered June term, 1842, for $264 96¼ cents debt, with interest from 11th June, 1841, till paid, and $5 51 cents cost. Execution issued, delivered to sheriff, and returned same dates as above, with same return endorsed.

In the four cases of Nesbit against Brandon, other executions issued on the 11th August, 1842, and were delivered to sheriff 13th August,

1842, and returned October 18th, 1842, with the following endorsement on each, to wit:

"Levied on 420 hogs, 23 cattle, one yoke of oxen and cart, 2 wagons and gear, 5 negroes, Nancy, Bob, Jim, Lafayette, Hannah; one jack, 200 acres of land, leaving out the steam mill lot, September 2d, 1842.

M. D. MOORE, *D.*,
For JOHN WAITS, *S. H. C.*

And not sold, October 18th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

And afterwards, to wit, on the 22d day of October, 1842, there issued ven. expo's in the cases of Nesbit vs. Brandon, for the sale of the above named property, which were delivered to the sheriff day of and returned December 19th, 1842, with the following endorsements and returns, to wit:

On the vend. ex. for $264 96¼ cents, as follows: "As counsel for the plaintiff, I agree that the property purchased by each plaintiff shall be a credit on his execution.

November 10, 1842. JOHN TRIMBLE.

The following property was sold by agreement of the plaintiff; in the execution each plaintiff was to be entitled to the amount of property purchased by himself, and James Nesbit became the purchaser of 50 hogs at $2 50, making $125; and 50 more hogs at $2 18 cents, making $109; and 100 more hogs at $2, and 31 hogs at $1 8 cents, making $33 28; one bay filly at $12; one sorrel mare at $16, making in all $495 28; and other persons became the purchasers, and the articles and prices can be seen, by a reference to Daniel Shawhan's executions, amounting to $128 23 cents; and there being other executions, received on this execution $271 14, which, after deducting my commissions, entitles this execution to a credit of $257 59.

November 10*th*, 1842. M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

"The land, negroes, wagon, gear, &c., which were levied on in virtue of this execution, *is* subject to a decree of the Bourbon circuit court in favor of John L. Shawhan. M. D. MOORE. *D.*
For JOHN WAITS, *S. H. C.*

On the ven. expo's for $91 80 cents, the foregoing endorsements and return *was* made, with the exception, that it is entitled, after deducting sheriff's commission, to a credit of $95.

On the ven. expo's for $91 95 cents, the same endorsements and return were made, with the exception that it is entitled to a credit of $90 25 cents, after deducting sheriff's commissions.

On the ven. expo's for $75 50 cents, the same endorsement and return was made, with the exception that it is entitled to a credit of $72 34 cents, after deducting sheriff's commission.

DANIEL TIBBS,
against
BRANDON AND SHAWHAN.

Judgment rendered June term, 1842, for $125 debt, with interest from 1st March, 1841, till paid, and costs $6 13¾ cents. Execution issued 28th June, 1842. Delivered to sheriff June 30th, 1842, and returned 13th of August, 1842, "no property found."

And afterwards, on the 15th of August, 1842, another fi. fa. issued herein, and was delivered to sheriff, August 20th, 1842, which was returned 17th October, 1842, with the following return thereon endorsed, to wit:

Levied on 420 head of hogs, 21 head of horses, 23 head of cattle; 1 yoke of oxen and cart; 2 wagons and gear; 5 negroes, Bob, Jim, Lafayette, Hannah, Nancy; 1 jack, 200 acres of land, leaving out the steam mill lot.

September 2d, 1842. M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

The property was offered and not sold, for want of bidders.

October 7th, 1842. M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

And afterwards, on the 21st of October, 1842, there issued a ven. expos. herein for the sale of the above named property, which was returned Nov. 26, 1842, with the following endorsement thereon:

"I hereby release the within levy, Nov'r 26th, 1842
DANL. TIBBS,
By W. K. WALL, *Att'y.*"

And afterwards, on the 30th Nov., 1842, there issued another fi. fa. herein, which was delivered to the sheriff Dec'r 1st, 1842, and returned Feb'y 10th, 1843: "No property found."

And afterwards, on the 13th Feb'y, 1843, there issued another fi. fa. herein, which was delivered to S. F. Tibbs on the date, and has not been returned.

MICHAEL FRY
against
SHAWHAN & BRANDON.

Judgment, June term, 1812, for $103 50 cts. debt, with interest from 19th Oct'r, 1839, till paid, and costs $6 13½. Execution issued 29th June, 1842, delivered to sheriff 30th June, 1842, and returned August 13th, 1842: "No property found."

And afterwards, on the 15th August, 1842, there issued another fi. fa. herein, which was delivered to the sheriff 20th August, 1842, and returned 21st Nov'r, 1842, endorsed as follows, to wit:

Levy this ex'on on one of J. L. Shawhan's best negroes.
J. R. CURRY, *for pl'ff.*

Levied on one negro boy Isham, Sept. 28th, 1842.
M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

Replevied Oct. 5th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

And afterwards, on the 21st of February, 1843, there issued a fi. fa. herein, on R. Cond vs. Brandon & Shawhan and Daniel Shawhan, and directed to the sheriff of Bourbon, which was delivered on the date to J. R. Curry, attorney, and has not been returned.

MOSES WEBB
against
BRANDON & SHAWHAN.

Judgment, June term, 1842, for $100 13 cts. debt, with int. from 18th Sept., 1840, till paid, and $6 38½ cts. costs. Execution issued 27th June, 1842, delivered to sheriff same day; on which fi. fa. are the following credits, to wit, $20 28 cts. paid Dec'r 14th, 1840, and $16 paid Dec'r 1st, 1841, as per endorsement on note, which execution was returned Aug. 13, 1842: "No property found."

And afterwards, on the 11th day of Aug., 1842, there issued another fi. fa. herein, with the same credits thereon endorsed, and delivered to sheriff Aug. 13th, 1842, and returned Oct. 17, 1842, as follows, to wit:

"Levied on 420 head of hogs, 21 head of horses, 23 head of cattle, 1 yoke of oxen and one cart, 2 wagons and gear, 5 negroes, Nancy, Bob, Jim, Lafayette, Hannah, one jack, 200 acres of land, leaving out the steam mill lot; Sept. 2d, 1842. The property levied on was offered and not sold for want of bidders; Oct. 7th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*"

And afterwards, on the 15th of October, 1842, there issued another fi. fa. herein, which was delivered to John Trimble on the date, but has not been returned.

And afterwards, on the 21st of October, 1842, there issued a ven. expo's herein for the sale of the above named property, which was returned 19th Dec'r, 1842, with the following thereon endorsed, to wit:

As counsel for the plaintiff, I agree that whatever *ever* property each plaintiff purchases shall be a credit on his execution.

Nov'r 10th, 1842. JOHN TRIMBLE.

The following property was sold, and by an agreement between the plaintiffs, each plaintiff was to be entitled to the amount of property he purchased, and Moses Webb became the purchaser for one bull for $20 00, and other individuals became the purchasers for other property to the amount of $128 23 cts., and there being other executions.

Received on this execution $27 87½, which, after deducting my commission, entitles this execution to a credit of $26 48 cts.; Nov'r

10th, 1842. The land, negroes, wagons, &c., which was not sold, is subject to a decree of the Bourbon circuit court in favor of John L. Shawhan; December 17, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

W. A. WITHERS
against
BRANDON & SHAWHAN.

Judgment, June term, 1842, for $113 25 debt, with interest from 3d Oct'r, 1840, till paid, and $6 13½ cts. costs. Execution issued 27th June, 1842, delivered to sheriff 28th June, 1842, and returned August 13, 1842: "No property found."

And afterwards, on the 3d Sept'r, 1842, there issued another fi. fa. herein, which was delivered to sheriff on the date, and returned 17th Oct., 1842, as follows, to wit:

Levied on one hundred acres of land of Benjamin Brandon, Sept. 21st, 1842. Not sold, Oct. 18th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

And afterwards, on the 22d Oct'r, 1842, there issued a ven. expo's herein for the sale of the above named land, which was returned 14th Dec'r, 1842, with the following endorsement thereon, to wit:

"This execution having been levied on a tract of land which had been conveyed from Brandon to Withers in trust, and the judge of the Bourbon circuit court, in the case of Shawhan, &c., vs. Brandon, &c., having decreed a sale of said land, the levy under this ex'on is therefore released.

CYRIA, 14*th Dec'r*, 1842. J. R. CURRY,
Att'y for pl'ff."

And afterwards, on the 15th day of December, 1842, there issued another fi. fa. herein, which was delivered to sheriff Dec'r 19th, 1842, and returned Feb'y 14th, 1843: "No property found."

And afterwards, on the 25th Feb'y, 1843, there issued another fi. fa. herein, which was delivered to Withers, and has not been returned.

Major KINSBROUGH
against
BENJAMIN BRANDON.

Judgment, June term, 1842, for $1,038 86 cts., with int. from 1st June, 1841, till paid, and $507 debt, with interest from 25th Dec'r, 1841, till paid, and costs $6 01¼. Ex'on issued 27th June, 1842, endorsed with the following credits, to wit: $471 60, paid June 15th, 1841; $188, paid Sept. 14th, 1841; $100, paid March 19th, 1842; $171 60, paid June 15th, 1841; and $6 12 cts. costs, paid March 19th,

1842; which fi. fa. was delivered to sheriff 27th June, 1842, and returned Aug. 13th, 1842: "No property found."

And on the 11th Aug., 1842, there issued another fia. fa. herein, with the same credits endorsed thereon, which was delivered to sheriff Aug. 13th, 1842, and returned Oct. 17th, 1842, as follows, to wit:

"Levied on 420 head of hogs, 23 head of cattle, 21 head of horses, 1 yoke of oxen and cart, 2 wagons and gear, 5 negroes, Nancy, Bob, Jim, Lafayette, Hannah, one jack, 200 acres of land, leaving out the steam mill lot. Sep'r 2d, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*"

"The property was offered, and not sold for want of bidders. Oct. 7th, 1842."

And afterwards, on the 21st Oct., 1842, there issued a ven. expo's with the same crs. thereon endorsed, together with the agreement of counsel, as in the other cases herein, which ven. expo's was returned, Dec'r 19th, 1842, as follows, to wit:

"The following property was sold, and by an agreement of the parties, the plaintiffs' *executions was* to be entitled to the amount each plaintiff bought, and Major Kinsbrough became the purchaser for 50 head of hogs, at 2 55 cts. each, making $127 50; and 52 head of hogs, at $2 00 each, making $104 00; and one cow, at $7 25 cts.; one bay filly, at $37; and one black filly, at $19 00, and one bay horse, at $73 00, making $367 73; and other individuals became the purchasers for other property to the amount of $128 23 cts., and there being other executions entitled to a portion of that amount, the amount of this ex'on is $409 80 cts., which, after deducting my com'n, entitles this ex'on to a credit of $391 71 cts., and the land, negroes, and other property is subject to a decree of the Bourbon circuit court.

Nov'r 11th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*"

WILLIAM GRIFFITH
against
BEN. BRANDON & F. BROWN.

Judgment, June term, 1842, for $400 47 cts., with int. from 1st Jan'y, 1841, till paid, $6 28½ cts. costs, delivered to sheriff 30th June, 1842, on which fi. fa. is a credit of $42 24 cts., paid 15th March, 1842, and returned Sept. 13th, 1842, as follows:

"Levied on 250 acres of land, and all said Brown's negroes, Aug. 13th, 1842. Rep'd Sept. 7th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*"

And afterwards, on the 10th Dec'r, 1842, there issued an ex'on herein, on Rep. bond for $383 90 cts., with int. from 7th Sept., 1842,

till paid, and 45½ cts. costs, which was delivered to the sheriff Dec'r 10th, 1842, which was returned Feb'y 18th, 1843, with the following endorsements, to wit:

"Levied on one wagon, some 8 or 10 horses, 7 or 8 head of cattle, a lot of sheep, and one negro boy, the property of Francis Brown. Jan'y 2d, 1842. Not made for want of time.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

And afterwards, on the 20th Feb'y, 1843, there issued a ven. expo's herein. for the sale of the above named property, which was delivered to the sheriff, but has not been returned.

WILLIAM GRIFFITH, suit No. 2,
against
BRANDON & SHAWHAN.

Judgment, June term, 1842, for $697 debt, with int. from 1st March, 1842, till paid, and $6 13½ cents costs; execution issued 28th June, 1842, and delivered to sheriff 30th June, 1842, and returned August 13th, 1842. "No property found."

And afterwards, on the 10th Oct., 1842, there issued another execution herein, which was delivered to sheriff Oct. 11th, 1842, and returned Dec. 19th, 1842, as follows, to wit:

"Levied on 336 acres of land, of Benjamin Brandon's, and 300 acres of John L. Shawhan's, Oct. 11, 1842. The 336 acres of land, as levied on in virtue of this execution, is subject to a decree of the Bourbon circuit court, in favor of John L. Shawhan, and the land of Shawhan levied on was not sold for want of time; Dec. 17, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

DANL. SHAWHAN,
against
BENJ. BRANDON.

Judgment, June term, 1842, for 301 13 cts., with int. from the 20th Dec., 1841, till paid, and $75 with int. from 1st March, 1839, till paid, and $5 51 cts costs; execution issued 27th June, 1842, delivered to sheriff same date; returned "no property, 13th August, 1842;" and on the 11th August, 1842, there issued another fi. fa. herein, which was delivered to sheriff 13th August, 1842, and returned Oct. 17, 1842, as follows, to wit:

"Levied on 420 head of hogs, 21 head of horses, 23 head of cattle, 1 yoke of oxen, 1 cart, 2 wagons and gear, 5 negroes, Bob, Jim, Lafayette, Hannah, *Hannah*, and Nancy, one jack, 200 acres of land, leaving out the steam mill lot; Sept. 2nd, 1842. The property was offered and not sold, for want of bidders, Oct. 7th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

And afterwards, on the 21st Oct., 1842, there issued a ven. expo's herein, on which was endorsed the same agreement of plaintiffs' counsel as in the other fi. fas. vs. Brandon, which ven. expo's was returned 19th Dec., 1842, as follows, to wit:

"The following property was sold, and by agreement of the parties, the plaintiffs' execution was to be entitled to the amount each plaintiff bought, and Daniel Shawhan became the purchaser of 50 hogs at $1 87½ cts. each, making $93 75 cts.; 9 calves, for $2 93 cts. each, making $26 33; one yellow cow, at $7 00; one brindle do. at $3 50; 1 white cow, at $5 87½; 1 red do. at $4 12 cts; one do. $6; one red cow, $3 62; one mule colt, at $12 75; one gray horse, at $2 50 cts; one brown horse, at $13; one bay mare, at $20 25 cts; one bay do. $25 00; one bay filly, at $7 25; one sorrel mare, at $7 25; and other individuals became the purchasers of the following property, to wit: Silas H. Sparks, one cow, at $4 06¼ cents; Louis Perrin, cow, at $8 50; Thomas Wornall, one cow, at $7 50; Daniel McClintock, a cow, at $7 87½; Thomas Wornall, one horse, at $20 50 cts.; Benj. Berry, one bay mare, at $31; S. H. Sparks, one horse, at $9 25; Jas. Fraiser, one horse, at $18 00; Joseph Ammerman, 2 colts, for $18 25; and the cart and oxen to Jas. Miller, for $29; which was appropriated to Brandon tax, &c., except $3 30 cts., and there being other executions entitled to a portion of the last amounts, the amount made on this execution is $269 73, which, after deducting my commission, entitles this execution to a credit of $256 26 cts.; Nov. 10th, 1842, and George Warner became the purchaser of 40 hogs, at 3 cents each, making $1 20; which was appropriated to the summoning of a jury to try the right of property, which did not agree, Nov. 10th, 1842; "the land, negroes, wagon, &c., which was levied on in virtue of this execution, is subject to a decree of the Bourbon circuit court, in favor of John L. Shawhan; Dec. 17th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

"A list of the property, and price of each article, sold at Benj. Brandon's, to satisfy, in part, sundry executions in favor of James Nisbett, Major Kinsbrough, Daniel Shawhan, and Moses Wells, as follows:

50 hogs, 1st choice,	Major Kinsbrough,	$2 35 each	$127 50
50 " 2d "	James Nesbitt,	2 50 "	125 00
50 " 3d "	" "	2 18 "	109 00
50 " 4th "	Major Kinsbrough,	2 00 "	100 00
50 " 5th "	James Nesbitt,	2 00 "	100 00
50 " 6th "	" "	2 00 "	100 00
50 " 7th "	Danl. Shawhan,	1 87½ "	93 75
31 the balance,	James Nesbitt,	1 08 "	33 48
9 calves,	Daniel Shawhan,	2 95 "	26 55
1 brindle cow,	Silas H. Sparks,	- -	4 06¼
1 red do.	Lewis Perrin,	- -	8 50
1 yellow cow,	Daniel Shawhan	- -	7 00

1 brindle cow,	Daniel Shawhan, - -	$3 50
1 white, do.	" " - -	5 87½
1 red, do.	" " - -	6 00
1 " do.	Daniel Shawhan, - -	3 62½
1 cow,	Major Kinsbrough, - -	9 25
1 bay horse,	Thos. Wornall, paid, - -	20 50
1 mule colt,	Daniel Shawhan, - -	12 75
1 bay filly,	Major Kinsbrough, - -	37 00
1 black "	" " - -	19 00
1 brown horse,	Daniel Shawhan, - -	13 00
1 bay filly,	James Nesbitt, - -	16 00
1 " mare,	Daniel Shawhan, - -	25 00
2 " colts,	Joseph Ammerman, for -	18 25
1 " filly,	James Nesbitt, - -	12 00
1 brindle cow,	Daniel Shawhan, - -	3 50
1 red "	" " - -	4 12½
1 spotted "	Thomas Wornall, - -	7 50
1 bull,	Moses Webb, - -	20 00
1 red cow,	Daniel McClintock, - -	7 87½
1 bay mare,	Benj. Berry, - -	31 00
1 gray horse,	Daniel Shawhan, - -	2 50
1 black "	Silas H. Sparks, - -	9 25
1 sorrel "	James Frazer, - -	18 00
1 bay "	Maj. Kinsbrough, - -	73 00
1 " mare,	Daniel Shawhan, - -	20 25
1 " filly,	" " - -	7 25
1 sorrel mare,	" " - -	7 25

And 40 pigs to George Mozee at 3 cents each, making $1 20, which was appropriated to the costs of summoning a jury to try the right of property; Nesbitt and others vs. B. Brandon. This [is] a correct account of the property I sold of Benj. Brandon, and by a reference to the 4 executions in favor of James Nesbitt, Major Kinsbrough, Daniel Shawhan, and Moses Webbs, can be seen the amount each plaintiff bought, and the credit each execution received; Nov. 10, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

SILAS H. SPARKS,
against
BENJ. BRANDON.

Judgment, June term, 1842, for $81 25 debt, with int. from 1st May, 1842, till paid, and $5 50 cents costs; also one other judgment, rendered same term for $317, from 1st May, 1842, till paid, and $5 51 cents costs; also one other judgment, rendered same term for $100, with int. from 1st March, 1842, till paid, and $5 51 cents costs; upon which judgments

executions issued on the 27th June, 1842, and delivered to the sheriff 28th June, 1842, and returned 13th August, 1842. "No property found."

And afterwards, on the 15th August, 1842, there issued three other executions on said judgments, which were delivered to sheriff August 20th, 1842, and were returned 27th September, 1842, with the following return and endorsement thereon: "Levied on 420 head of hogs, 21 horses, 23 head of cattle, 1 yoke of oxen and cart, 2 wagons and gear, 5 negroes, Nancy, Bob, Jim, Lafayette, Hannah, 1 jack, 200 acres of land, leaving out the steam mill lot; Sept. 2nd, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

"I direct the sheriff to stay the within execution, Sept. 24, 1842."

SILAS H. SPARKS.

And afterwards, on the 30th Sept., 1842, there issued three other executions herein, which were delivered to sheriff 1st Oct., 1842, and returned 19th Dec., 1842, as follows, to wit: "Levied on 336 acres of land, Oct. 1st, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

The property levied on in virtue of this execution is subject to a decree of the Bourbon circuit court, in favor of John L. Shawhan, and no more property found; Dec. 17th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

WM. SINZER,
against
B. BRANDON.

Judgment, June term, 1842, for $94 13 cts. debt, with int. from 1st June, 1842, till paid, and $5 51 costs; execution issued 27th June, 1842, delivered to sheriff 28th June, 1842, returned 13th Aug., 1842, "no property found."

And afterwards, on the 15th Aug., 1842, there issued another fi. fa. herein, which was delivered to sheriff 20th Aug., 1842, and returned 17th Oct., 1842, as follows, to wit: "Levied on 420 head of hogs, 21 head of horses, 23 head of cattle, one yoke of oxen and cart, 2 wagons and gear, five negroes, Nancy, Bob, Jim, Lafayette, Hannah, one jack, 200 acres of land, leaving out the steam mill lots, Sept. 2nd, 1842; and not sold, Oct. 18th, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

And afterwards, on the 22d October, 1842, there issued a ven. expos. herein, for the sale of the above named property, which was returned on the 19th December, 1842, as follows, to wit:

"The property levied on in favor of this execution, was a part sold,

and there being older executions, this is entitled to no credit, and the balance of the property is subject to a decree of the Bourbon circuit court, in favor of John L. Shawhan.

December 17, 1842.

M. D. MOORE, *Deputy.*
For JOHN WAITS, *S. H. C.*"

WILLIAM WALDEN, assignee, &c.,
against
BRANDON & BROWN.

Judgment, June term, 1842, for $1,000 debt, with interest from 4th October, 1841, till paid, and $6 13½ cents costs. Execution issued 28th June, 1842, delivered to sheriff same day, and returned 13th August, 1842, as follows:

" This execution is not satisfied; August 13th, 1842.

M. D. MOORE, *Deputy.*
For JOHN WAITS, *S. H. C.*"

And afterwards, on the 13th of August, 1842, there issued another fi. fa. herein, which was delivered to sheriff same date, and returned October 17, 1842, as follows:

" Levied on 420 head of hogs, 21 head of horses, 23 head of cattle, one yoke of oxen and cart, 2 wagons and gear, 5 negroes, Bob, Jim, Lafayette, Nancy, ———, one jack, 200 acres of land, leaving out the steam mill lot, September 2d, 1842; and not sold, October 18th, 1842.

M. D. MOORE, *Deputy.*
For JOHN WAITS, *S. H. C.*"

And afterwards, on the 22d of October, 1842, there issued a ven. expos. for the sale of the above named property, which was returned on the 19th December, 1842, as follows, to wit:

" The property levied on in virtue of this venditioni was a part sold, and there being older executions this one was not entitled to any credit, and the balance is subject to a decree of the Bourbon circuit court in favor of John L. Shawhan.

December 17th, 1842.

M. D. MOORE, *Deputy.*
For JOHN WAITS, *S. H. C.*"

CATHARINE SNODGRASS
against
BRANDON & SHAWHAN.

Judgment, June term, 1842, for $749 81 cents debt, with interest from 21st May, 1840, till paid, and costs, $6 38½ cents. Execution issued 30th June, 1842, delivered to sheriff same date. Endorsed with a credit of $50 paid 29th June, 1840, and returned August 13th, 1842: " No property found, August 13th, 1842."

And afterwards, on the 3rd September, 1842, there issued another fi. fa. herein, which was delivered to the sheriff September 5th, 1842, and returned October 17, 1842, as follows, to wit:

"Levied on 100 acres of land of Benjamin Brandon's, September 21st, 1842; not sold October 18th, 1842.

M. D. MOORE, *Deputy.*
For JOHN WAITS, *S. H. C.*"

And afterwards, on the 22d of October, 1842, there issued a ven. expos. for the sale of the above named land, which was returned December 19th, 1842, as follows, to wit:

"The land levied on in virtue of this execution is subject to a decree of the Bourbon circuit court in favor of John L. Shawhan.

December 17th, 1842. M. D. MOORE, *Deputy.*
For JOHN WAITS, *S. H. C.*"

CATHARINE SNODGRASS
against
BENJAMIN BRANDON.

Judgment, June term, 1842, for $676 61 cents, with interest from 1st June, 1842, till paid, and for $539 46 cents, with interest from 10th April, 1841, till paid, and $5 76 costs. Execution issued 30th June, 1842. Endorsed with a credit of $33 60 cents paid April 14th, 1842. Delivered to sheriff 30th June, 1842, returned August 13th, 1842:

"No property found."

And afterwards, on the 3d September, 1842, there issued another fi. fa. herein, which was delivered to sheriff September 5th, 1842, and returned October 17, 1842, as follows, to wit:

"Levied on 100 acres of land of Benjamin Brandon's, September 21st, 1842; not sold October 18th, 1842.

M. D. MOORE, *Deputy.*
For JOHN WAITS, *S. H. C.*"

And afterwards, on the 21st October, 1842, there issued a ven. expos. herein, for the sale of the above named land, which was returned December 19th, 1842, as follows, to wit:

"The land levied on in virtue of this execution, is subject to a decree of the Bourbon circuit court in favor of John L. Shawhan.

December 17th, 1842. M. D. MOORE, *Deputy.*
For JOHN WAITS, *S. H. C.*"

BENJAMIN BERRY
against
BRANDON & SHAWHAN.

Judgment, June term, 1842, for $1,377 66 cents, with interest from 12th May, 1842, till paid, and $6 13½ cents costs. Execution issued 29th June, 1842. Delivered to sheriff 30th June, 1842; returned August 13th, 1842. "No property found."

And afterwards, on the 15th of August, 1842, another fi. fa. issued herein, which was delivered to sheriff 20th August, 1842, and returned 17th October, 1842, as follows, to wit:

"Levied on 420 head of hogs, 21 head of horses, 23 head of cattle,

1 yoke of oxen and cart, 2 wagons and gear, five negroes, Nancy, Jim, Bob, Lafayette, Hannah, one jack, 200 acres of land, leaving out the steam mill lot.

September 2d, 1842, not sold October 18, 1842.

M. D. MOORE, *Deputy*.
For JOHN WAITS, *S. H. C.*"

And afterwards, on the 22d of October, 1842, there issued a ven. expos. herein, for the sale of the above named land, which was returned as follows, to wit:

" I release the within levy, November 30th, 1842.

BENJAMIN BERRY."

And afterwards, on the 2d December, 1842, there issued another fi. fa. herein, which was delivered to sheriff December 3d, 1842, and returned 14th February, 1843. " No property found."

GEORGE H. PERRIN, assignee, &c.,
against
BRANDON & SHAWHAN.

Judgment, June [term,] 1842, for $215 18 cents, *wit* interest from 30th October, 1841, till paid, and $6 38½ cents costs. Credited by $100 paid December 17th, 1841. Execution issued 27th June, 1842; delivered to sheriff same date. Returned 13th August, 1842.

" No property found."

And afterwards, on the 11th August, 1842, another fi. fa. issued herein, endorsed with a credit of $100, paid December 17, 1841, and $20 paid 10th March, 1842, which execution was delivered to sheriff 13th August, 1842, and returned 17th October, 1842, as follows, to wit:

" Levied on 420 head of hogs, 21 horses, 23 cattle, one yoke of oxen and cart, 2 wagons and gear, 5 negroes, Nancy, Bob, Jim, Lafayette, Hannah, one jack, 200 acres of land, leaving out the steam mill lot.

September 5th, 1842.

The property levied on was advertised, and not sold for want of bidders.

October 7th, 1842.

M. D. MOORE, *Deputy*.
For JOHN WAITS, *S. H. C.*"

And afterwards, on the 21st October, 1842, there issued a ven. expos. for the sale of the above named property, which was returned 26th, 1842, as follows, to wit:

" I release the within levy, and wish a fi. fa.

November 26th, 1842. G. H. PERRIN."

And afterwards, on the 26th November, 1842, there issued another fi. fa. herein, which was delivered to sheriff same date, and returned 21st January, 1843, as follows, to wit:

" Levied on 100 acres of land.

November 26, 1843.

M. D. MOORE, *Deputy*.
For JOHN WAITS, *S. H. C.*"

Received the full amount of this execution by note, January 21st, 1843. G. H. PERRIN.

WILLIAM H. H. WALTON
against
B. BRANDON & H. MOZEE.

Judgment, September term, 1842, for $277 75 cents damages, and $11 29½ cents costs. Execution issued 29th September, 1842. Delivered to sheriff same date, and returned 17th December, 1842, as follows:

"Not made for want of time.

M. D. MOORE, *Deputy*.
For JOHN WAITS, *S. H. C.*"

And afterwards, on the seventeenth of December, 1842, another fi. fa. issued herein, which was delivered to said deputy sheriff on day of , one thousand eight hundred and forty-two, which has not been returned.

JOHN L. SHAWHAN
against
BENJ. BRANDON.

Judgment, September term, 1842, for $1,000, with interest from 25th December, 1841, till paid; also, $349, with interest from 1st March, 1842, till paid; and also, $1,372 56, with interest from 19th July, 1841, till paid, and $5 51 cents costs. Execution issued 26th September, 1842, delivered to sheriff same date, and was returned 28th November, 1842, as follows, to wit:

"Levied on 336 acres of land, September 29th, 1842.

M. D. MOORE, *Deputy*.
For JOHN WAITS, *S. H. C.*"

The land levied on was bound by a decree of the Bourbon circuit court, and therefore not sold, and no more property found.

November 28th, 1842.

M. D. MOORE, *Deputy*.
For JOHN WAITS, *S. H. C.*

And afterwards, on the 15th October, 1842, there issued another fi. fa. herein, which was delivered to John Trimble, and has not been returned.

A. BROADWELL
against
B. BRANDON & F. BROWN.

Judgment, September, 1842, for $3,694 37 cents, with interest from 13th June, 1842, till paid, and $6 13½ costs. Execution issued 22d September, 1842, and delivered to sheriff same date, and returned February 9th, 1843, as follows, to wit:

"Levied on 336 acres of land of Benjamin Brandon's, and 250 acres

of land of Francis Brown's, and all said Brown's negroes, stock of all descriptions, and farming utensils.

September 30th, 1843.

M. D. MOORE, *Deputy.*
For JOHN WAITS, *S. H. C.*"

Satisfied.

A. BROADWELL.

WILLIAM SUTTON, adm'r of William Sutton, deceased,
against
BENJAMIN BRANDON.

Judgmen, Sept'r, 1842, for $90 56. Debt, with int. from 1st Jan'y, 1842, till paid, and $5 86 cts. costs. Cr. by $9 12, paid 20 Dec'r, 1841, and $16, usurious interest. Exe'on issued 26 Sept., 1842, delivered to sheriff 29 Sept., 1842, and returned Nov'r 29th, 1842, as follows, to wit: Levied on 336 acres of land, Sept'r 30th, 1842.

M. D. MOORE, *D.*,
For JOHN WAITS, *S. H. C.*

The land levied on is subject to a decree of the Bourbon circuit court in favor of John L. Shawhan, and no more property found.

Nov'r 28th, 1842.

M. D. MOORE, *D.*,
For JOHN WAITS, *S. H. C.*

WM. TRIMBLE, ex'or, &c.,
against
SHAWHAN & BRANDON.

Judgment, Sept., 1842, for $258 22 cents, with interest from 4th April, 1839, till paid, and $6 13½ cts. costs. Ex'on issued 26th Sept'r, 1842, delivered to sh'ff 29th Sept., 1842. Returned 29th Nov'r, 1842, as follows, to wit: Levied on 336 acres of land, Sept. 30th, 1842. The land levied on is to be sold under a decree of the Bourbon circuit court for the use of John L. Shawhan, and no more property found.

Nov. 28th, 1842.

M. D. MOORE, *D.*,
For JOHN WAITS, *S. H. C.*

ISAAC MILLER
against
BRANDON, Shawhan, and John Lail.

Judgment, Sept., 1842, for $848, with interest from 9th August, 1842, till paid, and $6 76 cts. costs. Ex'on issued 27th Sept'r, 1842, delivered to sheriff 29th Sept., 1842, returned 12 Nov'r, 1842, as follows, to wit: Levied on 336 acres of land of Benjamin Brandon, and 150 acres of John Lail, Sept'r 30th, 1842. Replevied Oct. 31st, 1842.

M. D. MOORE, *D.*,
For JOHN WAITS, *S. H. C.*

And afterwards, on the 6th Feb'y, 1843, there issued a fi. fa. herein

on the rep. bond vs. said defendants and John Lail, as their security, which fi. fa. was delivered to J. Henry, D. S., but has not been returned.

GEORGE MOZEE
against
BENJAMIN BRANDON.

Judgment, Sept. term, 1842, for $389 92, with int. from the 28th of Feb'y, 1842, till paid, and $5 51 cts. costs. Credited by $33 33⅓ cts., paid 1st Nov'r, 1842, and $10⁰ usurious interest. Ex'on issued 27th Sept., 1842. Delivered to sh'ff 29th Sept'r, 1842. Returned 29th Nov'r, 1842, as follows, to wit: Levied on 336 acres of land, Sept'r 30th, 1842.

The land levied on is to be sold, under a decree of the Bourbon circuit court, for the use of John L. Shawhan, and no more property found.

Nov'r 28th, 1842.

M. D. MOORE, *D.*,
For JOHN WAITS, *S. H. C.*

NICHOLAS WARFIELD
against
BENJ. BRANDON.

Judgment, Sept., 1842, for $5 60, with int. from 2d Nov'r, '41, and $5 51 cts. costs. Ex'on issued 27th Sept., 1842. Delivered to sh'ff 27th Sept., 1842, and returned Dec'r 19th, '42, as follows, to wit: Levied on 336 acres of land, Sept'r 30th, 1842.

The land levied on in virtue of this ex'on is subject to a decree of the Bourbon circuit [court,] in favor of John L. Shawhan, and no more property found.

December 17th, 1842.

M. D. MOORE, *D.*,
For JOHN WAITS, *S. H. C.*

JOHN MCCALLA, use of John Lail,
against
B. BRANDON.

Judgment, Sept. T., 1842, for $700, with interest from May 8th, 1842, till paid, and $5 51 cts. Ex'on issued 27th Sept'r, 1842. Delivered to sh'ff Sept. 27th, 1842, and returned 19th Dec'r, 1842, as follows, to wit: Levied on 336 acres of land, Sept. 30th, 1842.

The land levied on in virtue of this ex'on is subject to a decree of the Bourbon circuit court in favor of John L. Shawhan.

Dec'r 17th, 1842.

M. D. MOORE, *D.*,
For JOHN WAITS, *S. H. C.*

JOHN WILLIAMS, adm'r of Samuel Williams, dec'd,
against
B. BRANDON and S. H. Sparks.

Judgment, June, 1842, for $70 00, with int. from 25th Dec'r,

1841, till paid, and $6 13½ costs. Ex'on issued 28th June, 1842. Delivered to sh'ff 30th June, 1842, and returned Aug. 10th, 1842.

Replevied July 21st, 1842.

THE COMMONWEALTH OF KENTUCKY,

Harrison circuit court, clerk's office, sct:

I, Thomas B. Woodyard, clerk of the circuit court aforesaid, do certify, that the foregoing 23 pages, including this one, contain true extracts from the judgments and fi. fa's therein mentioned, against Benj. Brandon and others, in the said court.

Given under my hand this 15th day of March, A. D. 1843.

THOS. B. WOODYARD, *Cl'k.*
Per J. M. TIMBERLAKE, *D. C.*

The following is a copy of the sale of the property of Benj. Brandon, made by Thomas B. Woodyard, as com'r, on the 24th day of Nov'r, 1842, in suit in chancery, John L. Shawhan, &c., vs. Brandon, &c., to wit:

Articles sold.	To whom.	Amount.
6 halter chains and collars	John Douglass	$3 12
One lot of old chains	Daniel Shawhan	2 50
Lot of rosin and kegs	Hiram Hall	43
3 boxes of glass	John Fry	1 50
Hackle and dipper	Joseph Patterson	25
2 sieves	Dan'l Shawhan	25
1 lot of sickles	James Patterson	25
1 lime sieve	Dan'l Shawhan	18¾
1 lot of old barrels	E. D. McAdams	25
1 shovel for meal	Wm. Kirtley	1 00
1 old shovel	George Lail	43
1 lot of old *sing*trees	Dan'l Shawhan	50
1 lot of old iron	John Snell	25
1 " clevises	Hiram Hall	87
1 " gate hinges	Joseph Patterson	1 75
2 boxes of old irons	John Fry	31
1 box of old iron	" "	37
6 axes	Major Kinsbrough	2 50
1 lot of old irons	John Fry	25
1 " wagon boxes	Same	50
2 old ploughs	Same	31
1 lot of shovel ploughs	Same	31
1 lot of hoes	Dan'l Shawhan	1 00
Woful irons	Jos. Patterson	1 18
Half bushel, &c.	McGibbon	25
1 cross-cut saw	Joseph Patterson	2 00

Articles sold.	To whom.	Amount.
1 lot of hoop iron	Jno. Fry	1 00
Chest and tools	James Miller	14 00
1 sledge hammer	John Douglass	1 50
1 spinning wheel	John Fry	2 87
1 do.	Jos. Patterson	2 12
1 tin bucket	John Snell	50
6 choice split bottom chairs	George Sidle	1 00
Lot of cupboard ware in cupboard	John Snell	8 00
3 candlesticks	Benj. Brandon	62
2 teaboards	Wesley Lain	1 18
1 table	John Snell	3 06
Small table	Jas. Patterson	75
Bed, bedstead, and bedding	Jos. Patterson	14 00
1 bottle	James Elliott	6
1 arm chair	Jos. Patterson	25
7 chairs	James Frazer	1 62
1 small chair	John Fry	62
Armed chair	Edward McAdams	43
Light stand	George Sidle	1 37
1 bedstead, &c.	Daniel Shawhan	7 50
1 do.	Same	15 50
1 stand and chest	Jos. Patterson	50
2 bottles and wine	John Shawhan	1 12
2 do.	Isaac Trimble	1 00
2 do.	R. C. Craddock	25
6 wine glasses	Jas. H. Martin	62
6 tumblers	Green Tucker	62½
3 do.	Same	25
2 glass plates	James Fraizer	62
8 silver tea spoons	John Shawhan, sen'r	4 50
Sugar tongs and cream spoon	T. B. Woodyard	3 00
6 table silver spoons	John Shawhan, sen'r	11 00
Sugar bowl and glass	Benj. Summers	75
Silver soup spoon	T. B. Woodyard	11 50
1 caster	Joseph Shawhan	7 62
1 lamp	J. H. Martin	1 06
2 candlesticks and snuffers	T. B. Woodyard	10 00
1 looking glass	George Redmon	4 75
1 waiter	Joseph Shawhan	50
1 dish	Green Tucker	1 37
Small waiter	Benj. Summons	6
11 books, each	George Redmon	8 36
Universal Magazine	R. C. Craddock	12
2 books	George Lail	40

Articles sold.	To whom.	Amount.
Cook book	Green Tucker	18
3 books	Noah Patterson	50
1 looking glass	Jos. Shawhan	25
4 profiles	Addison Thompson	1 00
1 looking glass	Jos. Shawhan	25
1 set of chairs	Jos. Patterson	1 75
1 bureau and book case	Jos. Patterson	9 00
1 sett of tables	George Lail	6 75
1 desk	R. C. Craddock	2 00
1 sideboard	James Kennington	3 75
2 large glasses	James Miller	14 50
1 clock	T. B. Woodyard	23 00
1 lot of carpeting	Jos. Shawhan	10 00
Was bowl and stand	Daniel McClintock	1 00
1 stand and pitcher	James Miller	1 87
3 window blinds	Mrs. Brandon	1 37
1 half bushel	Jas. Miller	1 37
1 lot barrels	Same	1 18
2 jugs and demijohns	Wm. Snizer	81
1 table, and all that is on it	Benj. Brandon	31
1 teakettle and brass kettle	James Patterson	1 87
1 lot of pot metal	Same	68
1 gridiron	George Sidle	25
1 large kettle	Anderson Stuart	1 68
1 pot	Benj. Summons	50
1 kettle	McGibbon	1 37
1 lot of double trees	James Givens	1 50
1 copper pump	McGibbon	20 00
1 small stove	Jesse Knight	8 18
1 large stove	T. B. Woodyard	11 00
2 first-choice scythes	Green Tucker	2 37
2 scythes	James Patterson	1 75
1 large wheel	Same	1 50
1 large wheel	Geo. Sidle	62
1 keel	Jos. Patterson	1 31
1 wine barrel	Danl. McClintock	62
1 lot of cooper's stuff, 7000 pieces, at $4 62 per thousand remainder of cooper stuff, 1,300, $3 81 per thousand	John L. Shawhan	32 24
1 waggon	Same	49 50
1 do.	Daniel Shawhan	51 00
1 lot wagon tire, &c.	Abraham Kellar	151 00
gate	Jno. Kaugh	7 00
	Jos. Patterson	2 50

1

Articles sold.	To whom.	Amount.
1 gate, 2d choice - - -	Jos. Patterson -	2 56
1 gate, 3d choice - - -	James Patterson -	2 06
7 shoats - - - -	Benj. Brandon -	4 41
1 lot of tubs - - -	Danl. Shawhan -	3 00
1 wheat fan - - -	James Patterson -	5 00
1 Harrow - - - -	John Redmon -	2 56
1 lot of rye - - -	Daniel Shawhan 15½	6 89
1 lot of bags - - -	Daniel Shawhan 25½	1 37½
2 1st choice ploughs - -	Benj. Brandon -	2 00
2 old ploughs - - -	John Fry - -	25
2 do - - - -	Green Tucker -	50
2 ploughs - - - -	James Warth -	1 00
1 plough and double trees -	John L. Shawhan -	1 13
1 sleigh - - - -	Major Kinsbrough -	4 18
1 jackass - - - -	James Patterson -	32 00
1 half of break wagon - -	John L. Shawhan -	31 00
1 wood bed - - -	Same - -	68
1 set of hind gear - - -	George Lail - -	8 50
Hores rigilar - - -	Jos. Patterson -	5 25
1 lot of old gear - - -	George Lail - -	1 43
1 lot of britching - - -	John Douglass -	4 87
1 lot of old gear - - -	James H. Martin -	3 06
1 pair of gear - - -	E. D. McAdams -	1 31
1 lot of gear $2 00; 1 pair of gear $2 06 - - -	James Patterson -	4 06
1 lot of hind gear - - -	Joseph Shawhan -	9 00
1 pair of gear - - -	James Patterson -	2 00
1 collar - - - -	Hardin Simmon -	68
1 lot of old chairs - -	Wm. Berry - -	1 25
1 log chain and stretchers $8; 6 housings $3 - - -	B. Galbreath -	11 00
Cooper's tools - - -	McAddams - -	1 00
2 cutting boxes - - -	Jas. Patterson -	2 87
1 bay mare - - -	Jos. Patterson -	2 50
6 bunches of blacking - -	S. H. Sparks -	43
6 do. do. - -	Major Kinsbrough -	43
6 do. do. - -	Dan. Shawhan -	37
The balance, more or less - -	James Patterson -	75
1 small pair of steelyards - -	E. D. McAddams -	62
1 cupboard - - -	John L. Shawhan -	25
1 large pair of steelyards - -	Jos. Patterson -	3 18
1 pair of old andirons - -	John L. Shawhan -	75
1 do. do. - -	E. D. McAddams -	25
Paint stone, knife, and grinder -	John Fry - -	1 87

Articles sold.	To whom.	Amount.
Cook book	Green Tucker	18
3 books	Noah Patterson	50
1 looking glass	Jos. Shawhan	25
4 profiles	Addison Thompson	1 00
1 looking glass	Jos. Shawhan	25
1 set of chairs	Jos. Patterson	1 75
1 bureau and book case	Jos. Patterson	9 00
1 sett of tables	George Lail	6 75
1 desk	R. C. Craddock	2 00
1 sideboard	James Kennington	3 75
2 large glasses	James Miller	14 50
1 clock	T. B. Woodyard	23 00
1 lot of carpeting	Jos. Shawhan	10 00
Was bowl and stand	Daniel McClintock	1 00
1 stand and pitcher	James Miller	1 87
3 window blinds	Mrs. Brandon	1 37
1 half bushel	Jas. Miller	1 37
1 lot barrels	Same	1 18
2 jugs and demijohns	Wm. Snizer	81
1 table, and all that is on it	Benj. Brandon	31
1 teakettle and brass kettle	James Patterson	1 87
1 lot of pot metal	Same	68
1 gridiron	George Sidle	25
1 large kettle	Anderson Stuart	1 68
1 pot	Benj. Summons	50
1 kettle	McGibbon	1 37
1 lot of double trees	James Givens	1 50
1 copper pump	McGibbon	20 00
1 small stove	Jesse Knight	8 18
1 large stove	T. B. Woodyard	11 00
2 first-choice scythes	Green Tucker	2 37
2 scythes	James Patterson	1 75
1 large wheel	Same	1 50
1 large wheel	Geo. Sidle	62
1 keel	Jos. Patterson	1 31
1 wine barrel	Danl. McClintock	62
1 lot of cooper's stuff, 7000 pieces, at $4 62 per thousand remainder of cooper stuff, 1,300, $3 81 per thousand	John L. Shawhan	32 24
	Same	49 50
1 waggon	Daniel Shawhan	51 00
1 do.	Abraham Kellar	151 00
1 lot wagon tire, &c.	Jno. Kaugh	7 00
gate	Jos. Patterson	2 50
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Articles sold.	To whom.	Amount.
1 gate, 2d choice	Jos. Patterson	2 56
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7 shoats	Benj. Brandon	4 41
1 lot of tubs	Danl. Shawhan	3 00
1 wheat fan	James Patterson	5 00
1 Harrow	John Redmon	2 56
1 lot of rye	Daniel Shawhan 15½	6 89
1 lot of bags	Daniel Shawhan 25½	1 37½
2 1st choice ploughs	Benj. Brandon	2 00
2 old ploughs	John Fry	25
2 do	Green Tucker	50
2 ploughs	James Warth	1 00
1 plough and double trees	John L. Shawhan	1 13
1 sleigh	Major Kinsbrough	4 18
1 jackass	James Patterson	32 00
1 half of break wagon	John L. Shawhan	31 00
1 wood bed	Same	68
1 set of hind gear	George Lail	8 50
Hores rigilar	Jos. Patterson	5 25
1 lot of old gear	George Lail	1 43
1 lot of britching	John Douglass	4 87
1 lot of old gear	James H. Martin	3 06
1 pair of gear	E. D. McAdams	1 31
1 lot of gear $2 00; 1 pair of gear $2 06	James Patterson	4 06
1 lot of hind gear	Joseph Shawhan	9 00
1 pair of gear	James Patterson	2 00
1 collar	Hardin Simmon	68
1 lot of old chairs	Wm. Berry	1 25
1 log chain and stretchers $8; 6 housings $3	B. Galbreath	11 00
Cooper's tools	McAddams	1 00
2 cutting boxes	Jas. Patterson	2 87
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6 do. do.	Major Kinsbrough	43
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The balance, more or less	James Patterson	75
1 small pair of steelyards	E. D. McAddams	62
1 cupboard	John L. Shawhan	25
1 large pair of steelyards	Jos. Patterson	3 18
1 pair of old andirons	John L. Shawhan	75
1 do. do.	E. D. McAddams	25
Paint stone, knife, and grinder	John Fry	1 87

Articles sold.	To whom.	Amount.
1 fifth chain	Silas H. Sparks	2 18
1 sett of wagon bows	Danl. Shawhan	1 00
1 feed trough	Jno. L. Shawhan	2 00
1 rifle gun	T. B. Woodyard	10 00
1 negro man Jim	Caleb Walton	400 00
1 " " Bob	John Shawhan	200 00
1 " boy Lafayette	" "	464 00
1 " girl	John Trimble	428 00
1 " woman	John Shawhan	100 00
1 lot of barrels	Jno. L. Shawhan	82
Bed, bedstead, and bedding	Major Kinsbrough	14 00
1 lot of old barrels	John Fry	25
1 horse	John L. Shawhan	51 50
1 wheelbarrow	Wm. B. Glave	2 00
1 cow	Newson McGibbon	7 00

STATE OF KENTUCKY, *Harrison county, sct:*

I, Thomas B. Woodyard, commissioner, appointed by the Bourbon circuit court, in the suit in chancery, wherein John L. Shawhan & als. are complainants, and Benjamin Brandon & als. are defendants, do hereby certify, that the foregoing is a true copy of the sale made under the decree of said court, at the house of said Brandon, on the 24th of November, 1842.

Given under my hand this 15th day of March, 1843.

Commissioner.

[L. S.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon John L. Shawhan, Isaac Miller, Green Rennington, George H. Perrin, Wm. A. Withers, Catharine Snodgrass, John O. Hodges, and John Williams, of Harrison county, Benj. Berry and Daniel Shawhan, of Bourbon county, the President, Directors and Company of the Bank of Kentucky, of Louisville, and Ben. Brandon, of Missouri, to appear before the judge of the district court of the United States of America, in and for the district of Kentucky, at the capitol in Frankfort, on the 2d Monday in September next, to answer a bill in chancery, exhibited against them in our said court by Perry Wherritt, ass'ee of the estate of Benj. Brandon; and this they shall in nowise omit; and have then there this writ.

In testimony whereof, Thomas B. Monroe, judge of our said court, hath caused the seal thereof to be hereunto affixed this day of August, A. D. 1843, and in the 68th year of our independence; not to be executed on President Bank of Kentucky.

Attest: JNO. H. HANNA, *C. K. D. C.*

(Endorsement:) The defendants are to enter their appearance in this suit in the clerk's office, on or before the day at which the subpœna is returnable.

Att: JOHN H. HANNA, *C. K. D. C.*

Marshal's return.

"Not executed, having been mislaid."

W. B. BLCKBURN, *M. K. D.*

Novr. 13*th*, 1843.

United States of America, to the marshal of the Kentucky district, greeting:

You are hereby again commanded to summon Jno. L. Shawhan, Isaac Miller, Green Rennington, Geo. H. Perrin, William A. Withers, Catharine Snodgrass, John O. Hodges, and John Williams, of Harrison county, Benjamin Berry and Daniel Shawhan, of Bourbon county, the President, Directors & Co. of the Bank of Ky., of Louisville, and Benjamin Brandon, of Missouri, to appear before the judge of the district court of the United States of America, in and for the district of Kentucky, at the capitol in Frankfort, on the 2d Monday in December next, to answer a bill in chancery, exhibited against them in our said court by Perry Wherritt, ass'ee of the estate of Benjamin Berry; and this they shall in nowise omit; and have then there this writ.

In testimony whereof, Thomas B. Monroe, judge of our said court, hath caused the seal thereof to be hereunto affixed, this 21st day of November, A. D. 1843, and in the 68th year of our independence. Not to be executed on President Bank of Kentucky.

Att: JOHN H. HANNA, *C. K. D. C.*

Endorsement, viz: "Memo: the defendants must enter their appearance in this suit in the clerk's office on or before the second Monday in December next, otherwise the bill will be taken as confessed against them.

Attest: JOHN H. HANNA, *C. K. D. C.*

Marshal's return.

"Executed on Isaac Miller, Green Rennington, William A. Withers Catharine Snodgrass, John O. Hodges, John Williams, and Benjamin Berry, by personal service, and on Geo. H. Perrin, by delivering a copy of this subpœna to the clerk at his store, and on John L. Shawhan and Daniel Shawhan, by delivering a copy to their wives at their residences. Benjamin Brandon not found.

Decr. 1*st*, 1843.

ROBERT H. CAMPBELL,
Deputy Marshal, U. S.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, on Monday, the 18th day of December, 1843, came the defendants, John L. Shawhan, Daniel Shawhan, and Benjamin Berry, by counsel, and filed their separate answers herein; and on motion of

said defendants a rule is awarded them against the complainants, to file a replication to each of said answers on or before the fourth Monday in December instant.

Which said answers filed as above are in the words and figures following, to wit:

"The answer of John L. Shawhan to a bill in chancery, exhibited against him, and others, in the district court of the United States for the district of Kentucky, by Perry Wherritt, assignee in bankruptcy of the estate of Benjamin Brandon.

This defendant, for answer to said bill, or to so much thereof as is deemed material for him to answer, says, that he has been informed that some proceedings in bankruptcy have been had against Benjamin Brandon, but, of his own personal knowledge, he knows nothing of the decree rendered against him, and therefore does not admit it, but requires proof thereof. This defendant states that, from information which he believes, that the petition was filed against said Brandon and the proceedings carried on at the instance of said Brandon, and for the purpose of defrauding this defendant of his right, as a creditor and surety of said Brandon, and that he fraudulently failed to make the necessary and proper defence thereto. This defendant states, that he was not a party to the proceedings had against said Brandon, and that the decree in that case is not evidence against him of the facts upon which said decree was predicated, or for any other purpose than merely to shew that such a decree was rendered.

He admits that said Brandon, by deed [of] trust, dated the 6th day of April, 1842, conveyed to the deft. Wm. A. Withers, all the property which Brandon then owned, except that which was exempted by law from execution, as stated in complainant's bill; but he does not admit that said Brandon was a merchant, or was actually using the trade of merchandise, or was a retailer of merchandise, when he executed said deed of trust, but requires proof thereof; and this defendant does not admit that said Brandon had departed from the State of Kentucky with intent to defraud his creditors, or had concealed himself to avoid being arrested, or had committed any act of bankruptcy previously to the execution of said deed of trust, as the complainant has alleged in his bill, but requires proof thereof. This defendant admits that, on the 3d day of May, 1842, he caused a bill in chancery to be filed, and exhibited in the Harrison circuit court, in the name of himself and others, against said Benjamin Brandon and William A. Withers, alleging that said deed of trust of the 6th April, 1842, was fraudulent and void, and made to hinder, dely, and defraud creditors. But this defendant denies that said bill alleges that said deed of trust gave preference to some of the creditors of said Brandon, as complainant's bill alleges; and this defendant denies that said Brandon had, to the knowledge of this defendant, departed from the State of Kentucky, in which he resided, with the intent to defraud his creditors, or had concealed himself to avoid being arrested, or had committed any act of bankruptcy previously to the execution of said deed of trust, as the complainant has alleged in his bill; and this defendant did not know, nor had he heard, that the

making of such a deed was an act of bankruptcy, (if, indeed, it be so,) until after he had obtained his decree against Brandon and Withers in the suit aforesaid.

This defendant admits that said suit in chancery was commenced in the Harrison circuit court on the 3d day of May, 1842, and the process served on that day, and was afterwards removed to the Bourbon circuit court by change of venue; and afterwards, at the October term of the Bourbon circuit court, 1842, a decree was rendered by said court, declaring said deed of trust to Withers, of the 6th April, 1842, void as against the claims of this defendant and others, and subjecting the property therein named to sale for the benefit of this defendant and others, complainants in said bill. This defendant does not admit that the whole of the proceedings in said suit, in the circuit courts of Harrison and Bourbon, are illegal and void, as the complainant has alleged in his bill; and this defendant denies that he has, or ever had, any knowledge of said Brandon having committed an act or acts of bankruptcy previously to the execution of the deed of trust, or that the execution of that deed was an act of bankruptcy; or, if he had known it, that he was bound to proceed in bankruptcy, in preference to the remedy afforded him by the laws of the State. This defendant further says, that, on the 3d day of May, 1842, process of subpœna was issued on said bill in chancery, filed in the Harrison circuit court, against said Brandon and Withers, and on the same day executed on each of them by the sheriff of Harrison county, to whom the same was directed; and this defendant is advised to say, and does say, that he hereby acquired a lien on said property, mentioned in said deed of trust and bill in chancery, and that the filing of the petition in bankruptcy against said Brandon, could not, and did not, annul, destroy, or in any way impair his lien, which this defendant, by the filing of his bill, and the service of process on the defendants, had acquired on said property before any petition in bankruptcy filed against Brandon.

This defendant says, that the commissioner appointed by the decree of the Bourbon circuit court did, on the day of November, 1842, proceed to sell a part of the property mentioned in said deed of trust under said decree, and that, at the May term of said court, in the year 1843, another decree was made in said court, directing said commissioner to sell so much of the land comprised in said deed of trust as might be necessary to satisfy the demands mentioned in the former decree, and also to satisfy the demands mentioned in the latter decree; and defendant admits that said commissioner did, in obedience to said last decree, on the 14th day of July, 1843, proceed to sell said tract of land mentioned in said deed of trust, and that this defendant became the purchaser of said land at said sale; but this defendant denies that said decree was fraudulently obtained, and he does not admit that said sale was made in violation of the order of court, or with the intention to deprive the other creditors of said Brandon of their just rights, as the complainant has alleged in his bill; on the contrary, this defendant says that said William A. Withers was proceeding to sell said property under said deed of trust, and the other creditors of Brandon made no attempt to

set aside said deed of trust, or to proceed against said Brandon in bankruptcy, or by bill [in] chancery to restrain the action of Withers, until after this defendant and others had filed their bill in chancery, against Brandon and Withers, and after the service of process which issued thereon. This defendant refers to, and will in due time file, a transcript of the record, proceedings, and decree in said suit in chancery, in the Bourbon circuit court, against said Brandon and Withers, and prays that the same may be taken as part of this answer. This defendant says he has no personal knowledge of the complainant's having taken possession of the aforesaid tract of land, under the direction of this court, or of his being in possession thereof, under any order of this court, at the time of said sale and purchase, as the complainant has alleged in this bill; and, therefore, this defendant does not admit said allegations of said bills, but requires proof thereof. On the contrary, this defendant states, from information which he believes, that said Brandon remained in possession of said land for several months after this defendant obtained his first decree in said suit in chancery, and that Brandon then leased said land to others for one year, and put the lessees in possession thereof. And this defendant further states, that he is advised to say, that said sale and purchase were not made in violation of the restraining order of this court, but he does not admit that any was made; and, if made, he denies the right of the district court in bankruptcy, (when this defendant had filed his bill, and process was served,) and the proceeding was *in rem.*, and there was a *lis pendens* and lien thereby created in favor of this defendant, (which is recognised as a valid law by the State laws,) to make any order or decree which could in any way annul, destroy, or in any way impair his right and lien so created, and existing before any petition filed against Brandon; defendant admits that he is endeavoring to obtain a final decree in the suit in chancery, confirming his purchase of the land, and hopes to do so; but denies that he has threatened to take forcible possession thereof, or has set up any false claim thereto, as complainant has alleged; on the contrary, defendant states, from information and belief, that, after the decree of the Bourbon circuit court, in his favor and others, for the sale of said property mentioned in said deed of trust, that complainant, in violation of his duty, and for the purpose of preventing this defendant from obtaining the benefit of this decree, proceeded to file the bill in this case, and that the whole of the proceedings in this place, by complainant, was dictated by Brandon and Withers, and their counsel in the suit in chancery in the Bourbon circuit court, to defeat complainant and others in their just right. This defendant claims the right to the property purchased under the decree, and hopes that this honorable court will recognise and sustain that right, which, if he shall obtain, will still leave him greatly loser by Brandon; and, having answered, he prays to be hence dismissed, with his reasonable costs, &c.

J. TRIMBLE & B. MONROE,
for def't.

KENTUCKY, *Franklin county, to wit:*

This day John L. Shawhan came before me, a justice of the peace for the county aforesaid, and made oath that the facts stated in the foregoing answer, so far as made from his own knowledge, is true, and so far as made from the information of others, he believes to be true.

Witness my hand, this 15th day of December, 1843.

JAMES SHANNON, *J. P.*

The answer of Dan'l Shawhan to a bill in chancery, exhibited against him and others, in the district court of the United States for the district of Kentucky, by Perry Wherritt. This defendant, for answer to said bill, says, that he has been informed that some proceedings in bankruptcy had been had in this court against said Benjamin Brandon, but this defendant was not a party to said proceeding, and has no personal knowledge of the decree which was rendered in said case; and therefore this defendant does not admit that such a decree was rendered against said Brandon, as is set forth in the complainant's bill, but requires proof thereof. This defendant is informed, and believes, that said Brandon, by a deed of trust dated the 6th day of April, 1842, conveyed to said William A. Withers a tract of land, some slaves, and other property; but this defendant does not admit that said Brandon was a merchant, or was a retailer of merchandize, when he executed said deed of trust, but requires proof thereof. And this defendant does not admit that said Brandon had departed from the State with intent to defraud his creditors, or had concealed himself to avoid being arrested, or had committed any act of bankruptcy previous to the execution of said deed of trust, as the complainant has alleged in his bill, but requires proof thereof. This defendant says, he believes from information, that John L. Shawhan filed a bill in chancery, in the Harrison circuit court, against said Brandon and William A. Withers, for the purpose of setting aside said deed of trust, and that said John L. Shawhan used the name of this defendant as a complainant in said bill; but this defendant does not admit that said bill alleges that said deed of trust gave preferences to some of the creditors of said Brandon, as the complainant has alleged in his bill; and this defendant denies that said Brandon had, to the knowledge of this defendant, committed any act of bankruptcy previous to the execution of said deed of trust, as the complainant has alleged in his bill. This defendant says, he has been informed, and believes, that said suit in chancery was removed to the Bourbon circuit court by change of venue, and that a decree was rendered by said court, setting aside said deed of trust, and subjecting the property therein mentioned to sale for the benefit of this defendant and others; but this defendant does not admit, that the proceedings in said suit in the circuit courts of Harrison and Bourbon are illegal or void, as the complainant has alleged in his bill; and this defendant denies that he ever had any knowledge of the said Brandon having committed any act or acts of bankruptcy, previous to the execution of said deed of trust. This defendant denies all fraud, and prays to be dismissed with his costs, &c.

TRIMBLE & MONROE.

Sworn by Dan'l Shawhan, before me, a justice of the peace of Harrison county, this 12th day of December, 1843.

D. WOODRUFF, *J. P.*

The answer of Benjamin Berry to a bill in chancery, exhibited against him, and others, in the district court of the United States for the Kentucky district, by Perry Wherrit. This defendant, for answer to said bill says, he has been informed that some proceedings in bankruptcy have been had in this court against said Benjamin Brandon, but this defendant was not a party to said proceeding, and has no personal knowledge of the decree which was rendered in said case; and therefore this defendant does not admit that such a decree was rendered against said Brandon as is set forth in complainant's bill, but requires proof thereof. This defendant has been informed, and believes, that said Brandon, by a deed of trust, dated the 6th day of April, 1842, conveyed to William A. Withers a tract of land, some slaves, and other property; but this defendant does not admit that said Brandon was a merchant, or was actually using the trade of merchandize, or was a retailer of merchandize, when he executed said deed of trust, but requires proof thereof; and this defendant does not admit that said Brandon had departed from this State with intent to defraud his creditors, or had concealed himself to avoid being arrested, or had committed any act of bankruptcy previous to the execution of said deed of trust, as the complainant has alleged in his bill, but requires proof thereof. This defendant says, he believes, from information, that John L. Shawhan filed a bill in chancery in the Harrison circuit court, against said Brandon and Wm. A. Withers, for the purpose of setting aside said deed of trust, and that said Shawhan used the name of this defendant as a complainant in said bill; but this defendant does not admit that said bill alleges that said deed of trust gave preferences to some of the creditors of said Brandon, as the complainant has alleged in his bill; and this defendant denies that said Brandon had, to the knowledge of this defendant, committed any act of bankruptcy previous to the execution of said deed of trust, as the complainant has alleged in his bill. This defendant says, he has been informed that said suit in chancery was removed to the Bourbon circuit by change of *venue*, and that a decree was rendered by said court, setting aside said deed of trust, and subjecting the property therein mentioned to sale for the benefit of this defendant and others; but this defendant does not admit that the proceedings in said suit in the circuit courts of Harrison and Bourbon are illegal or void, as the complainant has alleged in his bill; and this defendant denies that he ever had any knowledge of the said Brandon ever having committed any act or acts of bankruptcy previous to the execution of said deed of trust. This defendant having answered, prays to be hence dismissed, with his costs, &c.

TRIMBLE & MONROE,
For defendant.

BOURBON COUNTY, *sct:*

This day came Benjamin Berry, before me, a justice of the peace for the county aforesaid, and made oath that the statements contained in the foregoing answer, as far as they relate to his own knowledge, are true, and so far as they relate to the information of others, he believes them to be true.

Given under my hand this 13th day of December, 1843.

SAMUEL ALLISON, *J. P.*

The United States of America, to the marshal of the Kentucky dis-
[L. S.] trict, greeting:

You are hereby again commanded to summon John L. Shawhan, Isaac Miller, Green. Rennington, George H. Perrin, William A. Withers, Catharine Snodgrass, John O. Hodges, and John Williams, of Harrison county; Benjamin Berry and Dan'l Shawhan, of Bourbon county; the President, Directors & Company of the Bank of Kentucky, of Louisville; and Benjamin Brandon, of Missouri, to appear before the judge of the district court of the United States of America, in and for the district of Kentucky, at the capitol in Frankfort, on the first Monday in January next, to answer a bill in chancery, exhibited against them in our said court, by Perry Wherrit, assignee of the estate of Benjamin Brandon, and this they shall in no wise *estate*, and have then there this writ.

In testimony whereof, Thomas B. Monroe, judge of our said court, hath caused the seal thereof to be hereunto affixed, this 7th day of December, A. D. 1843.

Attest: JOHN H. HANNA, *Cl'k K. D. C.*

Memo: to be executed on Benj. Brandon only.

Att.: JNO. H. HANNA, *Cl'k K. D. C.*

Memo. The defendant must enter his appearance to the within suit, on or before the 1st Monday in January next, otherwise the bill will be taken for confessed.

Att.: JOHN H. HANNA, *Cl'k K. D. C.*

Marshall's return. "The within named Benjamin Brandon not found, January 1st, 1842, and no inhabitant of this district.

W. B. BLACKBURN, Jr., *M. K. D.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, on Tuesday, the 19th day of December, 1843, came the complainant by his counsel, and filed the following replication, to wit:

The replication of Perry Wherritt, assignee of Benjamin Brandon, complainant, to the answers of John L. Shawhan, Benjamin Berry, and Daniel Shawhan. This repliant, saving and reserving to himself all manner of exceptions to the errors and insufficiencies of the said answers, for replication thereto, saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answers of the said defendants are untrue and

insufficient to be replied unto by this affiant; without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, conversed and avoided, traversed and denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct; and hereby prays, as in and by his said bill he hath already prayed, &c.

The following is the transcript of the record and proceedings in the Harrison and Bourbon circuit courts, referred to in, and made part of, the answer of John L. Shawhan, to wit:

STATE OF KENTUCKY, *sct:*

The following is a transcript of the proceedings had and taken in a suit in chancery, pending in the Bourbon circuit court, before the Hon. James Simpson.

JOHN L. SHAWHAN, Benj. Berry, Isaac Miller, Dan'l Shawhan, sen'r, Greenup Rennington, George H. Perrin, John Shawhan, sen'r, John Lail, William Gray, and John Douglass, complainants,

against

BENJAMIN BRANDON, William A. Withers, Catharine Snodgrass, William Griffith, John O. Hodges, The President, Directors and Company of the Bank of Ky., The President, Directors and Company of the Northern Bank of Ky., defendants.

Be it remembered, that heretofore, to wit, on the 15th day of July, 1842, the following papers were filed in the clerk's office of this hon. court, on a change of venue from the Harrison circuit court, viz:

To the honorable the judge of the Harrison circuit court, sitting in chancery. Your orators, John L. Shawhan, Benjamin Berry, the President, Directors, and Company of the Bank of Kentucky, Isaac Miller, Daniel Shawhan, Greenup Rennington, and George H. Perrin, respectfully represent, that your orator, John L. Shawhan, stands bound as the security of said Benjamin Brandon to your orator, Benjamin Berry, in about the sum of $1340 by note. That your orator, John L. Shawhan, stands bound, as the security of said Benjamin Brandon, to the President, Directors and Company of the Bank of Kentucky, in the sum of $800. That your orator, John L. Shawhan, stands bound, as security for said Brandon, to the President, Directors and Company of the Northern Bank of Kentucky, in the sum of $800. That your orator, John L. Shawhan, stands bound, as the security of said Brandon, to the President, Directors and Company of the Northern Bank of Kentucky, in the sum of $750. That your orator, John L. Shawhan, stands bound as the security of said Brandon, to your orator, John O.

Hodges, in the sum of about $425. That your orator, John L. Shawhan, stands bound, as the security for said Brandon to your orator, Isaac Miller, in the sum of about $800. That your orator, John L. Shawhan, stands bound as the security of the said Brandon to your orator, William Griffith, in the sum of about $790. That your orator, John L. Shawhan, stands bound, as the security of the said Brandon to your orator, Daniel Shawhan, in about the sum of $720. That your orator stands bound as the security of the said Brandon to the estate of Alexander Lewis, dec'd, in about the sum of $800; your orator, Rennington, being administrator of said estate. That your orator, John L. Shawhan, stands bound, as the security of the said Brandon to your orator, George H. Perrin, in about the sum of $100. That the said Brandon stands justly indebted to your orator, John L. Shawhan, in the sum of $842, by note dated the 17th day of March, 1842, and due the 1st day of March, 1843. That said Brandon stands justly indebted to your orator, John L. Shawhan, in the sum of $349, by note, due the 1st of March, 1842. That said Brandon stands justly indebted to your orator, John L. Shawhan, in the sum of $1000, by note due the 25th of December, 1841. That said Brandon stands justly indebted to your orator, John L. Shawhan, in the sum of $1000, by note due the 25th of December, 1842. That said Brandon stands justly indebted to your orator, John L. Shawhan, in the sum of about $1100, by note for $1372, dated 19th Feb'y, 1841, and due 5 months after date, subject to some credits thereon endorsed, which reduces the debt to about $1100, as heretofore stated. That your orator, John L. Shawhan, stands jointly bound with the said Brandon to various persons, for the debts of the late firm of Brandon & Shawhan, in about the sum of $3,500 or $4000. Your orators further state that, from information and belief, that said Benj. Brandon, on the 6th day of April, 1842, executed a deed of trust to a certain William A. Withers for five negroes, then in said Brandon's possession, a tract of land in Harrison county, estimated to contain 336 acres, two wagons and teams, together with a quantity of live stock, and household and kitchen furniture. To a copy of which deed of trust your orators refer as a part of this bill. Your orators further state, from information and belief, that said deed of trust was made by said Brandon to said Withers, for the purpose of hindering, delaying, and defrauding the creditors of the said Brandon in the collection of their debts. Your orators therefore pray, that the said Benjamin Brandon and William A. Withers may be made defendants to this bill, and that they may answer the allegations thereof, as fully as if specially interrogated. Your orators further state, from information and belief, that in order to carry out the aforesaid fraudulent intention of said Brandon as making said deed of trust, the defendant Withers is about to sell and dispose of the property mentioned in said deed, whereby the said property may be put out of the reach of your orators. Your orators therefore pray, that the said Benjamin Brandon and William A. Withers may be enjoined and restrained from selling and disposing of said 5 negroes, and tract of land, live stock, household and kitchen

furniture, two wagons and teams, and other property mentioned in said deed of trust, until this cause can be heard in equity; and that by a final decree the said property may be sold to satisfy the aforesaid demands of your orators, and that your orators may have such other and further relief as to equity belongs.

JOHN TRIMBLE, *for complainants.*

HARRISON COUNTY, *sct:*

This day came John L. Shawhan, before me, a justice of the peace for the county aforesaid, and made oath, that the statements contained in the foregoing bill, so far as they relate to his own knowledge, and that so far as they relate to the information of others, he believes them to be true.

Given under my hand, this 3d day of May, 1842.

D. WOODRUFF, *J. P.*

HARRISON COUNTY, *sct:*

We, the undersigned, two of the justices of the county court of Harrison county, selected by said court to award writs of injunction, &c., do hereby direct the clerk of the Harrison circuit court to issue an injunction, pursuant to the prayer of the foregoing bill, upon the complainant, John L. Shawhan, executing bond with good security, in the penalty of $12,000, conditioned for paying such costs and damages as may be awarded against said Shawhan, for issuing this injunction.

Given [under] our hands, this 3d day of May, 1842.

D. WOODRUFF, *J. P.*
H. COLEMAN, *J. P.*

The deed of trust referred to in the foregoing bill is as follows, to wit:

"This indenture, made and entered into this 6th day of April, 1842, between Benjamin Brandon, of Harrison county, and State of Kentucky, of the one part, and William A. Withers, of the county and State aforesaid, of the other part, witnesseth: That the said Benjamin Brandon, for and in consideration of one dollar, to him in hand paid, and for the further consideration hereinafter mentioned, hath given, granted, bargained, sold, released, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, release, convey, and confirm, unto the said William A. Withers, his successor or successors, forever, all the estate, real, personal, and mixed, of whatever nature or kind it may consist, (except such property only as by law not subject to execution,) said estate hereby conveyed consisting of a tract of about 336 acres of land, situated in the State and county aforesaid, and the same tract on which said Brandon now resides, and on which is a steam mill and distillery, the boundary of which land is more particularly designated in the several deeds which said Brandon holds for said land; also, five negroes, two wagons and teams, about 400 head of hogs, about 15000 pieces of cooper's stuff, all his stock of horses, cattle, and sheep, his household and kitchen furniture *an* farming utensils, his

debts and choses in action, of every kind and description; it being the intention of said Brandon by this deed to convey to the said Withers and his successors, forever, all his estate, real, personal, and mixed, and choses in action, with the exceptions hereinbefore expressed, whether the same be particularly mentioned and set forth in this instrument or not. To have and to hold all the estate, real, personal, and mixed, and choses in action, hereby conveyed to the said William A. Withers and his successor or successors, forever, in trust, for the following purposes, namely: To collect the debts and choses in action due, payable, or owing to said Brandon, and to sell the real estate hereby conveyed, either all together or in lots, as said trustee may think most advisable, at public auction to the highest bidder, on the following payments, namely, one-third of the purchase money to be paid in hand, and the residue in one and two years; and the slaves and personal estate to be sold *to be sold* at public auction to the highest bidder, on a credit of twelve months; and after making to said trustee a just and reasonable compensation for his trouble and expenses in executing this trust, to pay all the money which he may receive as trustee aforesaid, either by the collection of debts or choses in action, *of* from the proceeds of the sale of the trust estate, to all the creditors of said Brandon, rateably, proportionably to the amount of their respective debts or demands; but should any one or more of the creditors of said Brandon become the purchaser or purchasers of any portion of the real or personal estate, or slaves, hereby conveyed, said trustee is authorized and empowered to accept the debt or debts due or owing by said Brandon to such purchaser or purchasers, in payment for their respective purchases, so far as said debts may go; and in such cases, if any such should occur, only the residue of the price to be distributed pro rata as aforesaid; and after the payment of all said Brandon's debts, to pay the residue, if any, to said Brandon, his heirs and assigns; and the title to the estate hereby conveyed, he doth hereby warrant and defend to said Withers, and his successor or successors, forever, in trust for the purposes aforesaid, against the claim or claims of him, the said Benjamin Brandon, and against all other claims. In testimony of which, the said Benjamin Brandon hath hereunto subscribed his name and affixed his seal, this day and year first above written.

BENJAMIN BRANDON.

Acknowledged, April 6th, 1842.

THOS. B. WOODYARD, *Clk.*

STATE OF KENTUCKY, *Harrison county, sct:*

I, Thomas B. Woodyard, clerk of the county court for the county aforesaid, do certify, that this deed of trust, from Benjamin Brandon to William A. Withers, was produced to me in the county aforesaid, on the 6th April, 1842; and the same was acknowledged by the said Brandon to be his hand and seal, act and deed, for the purposes therein contained, and the same was by him ordered to be recorded; which is accordingly done, this 7th day of April, 1842.

THOS. B. WOODYARD,
C. H. C. C.

The injunction bond is as follows, viz:

Know all men by these presents, that we, John L. Shawhan and Major Kinsbrough and Charles Redmon, are held and firmly bound, unto Benjamin Brandon and William A. Withers, in the just and full sum of $12,000, current money, and for the payment, well and truly [to] be made to the said Benjamin Brandon and Wm. A. Withers, their heirs, executors, and administrators, we jointly and severally, firmly by these presents. Sealed with our seals, and dated this 3d day of May, 1842.

The condition of the above obligation is such, that whereas the above bound John L. Shawhan hath obtained an injunction in chancery, to enjoin and restrain the above named Benjamin Brandon and Wm. A. Withers from selling or disposing of five negroes, a tract of land of 336 acres, live stock, household and kitchen furniture, 2 wagons and teams, and other property mentioned in a deed of trust executed by said Brandon to his co-defendant Withers, until the further order of the Harrison circuit court concerning the same. Now, if the above bound John L. Shawhan shall prosecute the said injunction with effect, or in case of failure thereof, shall pay to the above named Benjamin Brandon and Wm. A. Withers all such costs and damages as shall be awarded against the said above bound John L. Shawhan, in case the injunction shall be discharged or dissolved by the court, then the above obligation else to remain in full force and virtue in law.

JOHN L. SHAWHAN, [L. S.]
M. KINSBROUGH, [L. S.]
C. REDMON, [L. S.]

Attest: A. MOORE.

HARRISON COUNTY, *sct:*

I, Andrew Moore, clerk of the Harrison circuit court, do certify, that Major Kinsbrough and Charles Redmon, the securities in the within and above bond, took the oath required by law previous to executing the same.

Witness my hand this 3d day of May, 1842, and in the 50th year of the commonwealth.

A. MOORE.

The following subpœna issued in chancery thereon.

The Commonwealth of Kentucky, to the sheriff of Harrison county, greeting:

We command you to summon Benjamin Brandon and William A. Withers, to appear before the judge of our Harrison circuit court, in the court house in Cynthiana, on the first day of our next June term, to answer unto a bill in chancery, exhibited against them by John L. Shawhan and others; and this they shall in nowise omit, under the penalty of £100 each, and have then there this writ.

Witness, Andrew Moore, clerk of our said court, this 3d day of May, 1842, and in the 50th year of the commonwealth.

A. MOORE.

Memorandum. This writ is to enjoin and restrain the defendants from selling and disposing of five negroes, a tract of 336 acres of land, live stock, household and kitchen furniture, two wagons and teams, and other property, mentioned in a deed of trust, executed by the defendant, Brandon, to his co-defendant, Withers, until the further order of the Harrison circuit court concerning the same.

Attest: A. MOORE.

Came to hand May 3d, at ½ an hour after 8 o'clock, A. M., 1842.
M. D. MOORE, *D. S.*
For JOHN WAITS, *S. H. C.*

Executed May 3d, about 10 o'clock, A. M., 1842.
M. D. MOORE, *D. S.*
For JOHN WAITS, *S. H. C. C.*

Orders made in the Harrison circuit court, June 15th, 1842.

"By consent of parties, it is ordered by this court that the motion in this cause to dissolve the injunction be continued until some future day of this term. Said notice to dissolve is as follows:

"Messrs. John L. Shawhan, Benjamin Berry, John Hodges, the President, Directors and Company of the Bank of Kentucky, the President, Directors and Company of the Northern Bank of Kentucky, Isaac Miller, William Griffith, Daniel Shawhan, Greenup Rennington, and George H. Perrin—

Gentlemen: Please take notice, that we will, on the 3d day of our next June term of the Harrison circuit court, move the judge of said court to dissolve an injunction obtained by you on a bill filed in said court, in which you are complainants and we are defendants.

WILLIAM A. WITHERS,
BENJAMIN BRANDON.

Cynthiana, 23d May, 1842.

STATE OF KENTUCKY, *Jefferson county, to wit:*

George Sinzer this day personally appeared before me, a justice of the peace in and for the county and State aforesaid, and made oath that he did, on the 31st day of May, 1842, at the counter of the Bank of Kentucky, in Louisville, deliver to the president and cashier of said bank a true copy of the within notice.

Given under my hand, this 31st day of May, 1842.

G. W. CHAMBERS, *J. P. J. C.*

Justice's fee, 25 cts., paid by G. Sinzer.

June 15th, 1842.

On motion of William Griffith, and the Northern Bank of Kentucky, by attorneys, and John O. Hodges, in person, it is ordered that their names be stricken out as complainants in this cause.

June 24th, 1842.

On motion of complainant's counsel, leave is given them to retake the deposition of Francis Brown, and the motion in this cause to dissolve the injunction coming on to be heard from the papers and arguments of counsel, it is ordered by the court that said motion be, and the same is hereby, overruled. The affidavit of Pleasant Lilly, in the case, was objected to by complainant's counsel.

June 25th, 1842.

On motion of complainant's counsel, leave is given them to retake the depositions taken by them, and, on motion of defendant's counsel, leave is given them to take the depositions of the witnesses whose affidavits were taken and read on their behalf, and this cause is continued until the next term of this court.

The petition for a change of venue in this cause is in the words and figures following, to wit:

"To the honorable Aaron K. Woolley, judge of the 3d judicial district:

Your petitioners, William A. Withers and Benjamin Brandon, would respectfully shew to your honor, that there is a suit in chancery depending in the Harrison circuit court, in which John L. Shawhan, Daniel Shawhan, Greenup Rennington, George H. Perrin, and the President, Directors and Company of the Bank of Kentucky, are complainants, and your petitioners are defendants, on the determination of which suit pecuniary interest to a large amount depend; and your petitioners do verily believe, that, owing to the dislike and prejudice of Henry O. Brown, the judge of the Harrison circuit court, to and against your petitioner, William A. Withers, that your petitioners have no chance for, or prospect of, obtaining justice in said court; they, therefore, pray your honor to grant them a change of the venue in said cause to some adjacent circuit.

WILLIAM A. WITHERS,
BENJAMIN BRANDON.

This day the above named William A. Withers and Benjamin Brandon personally appeared before me, a justice of the peace in and for the county aforesaid, and in my presence subscribed their names to the above petition, and then made oath, before me, [that] the said petition and allegations therein contained are true, in substance and in fact.

Given under my hand, this 28th day of June, 1842.

D. WOODRUFF, *J. P.*

The notices herein are as follows, viz:

Messrs. John L. Shawhan, Daniel Shawhan, Greenup Rennington, George H. Perrin, and the President, Directors and Company of the Bank of Kentucky—

Please take notice that, on Saturday, the 9th day of July, 1842, between the hours of 6 o'clock, A. M., and 6 o'clock, P. M., of that day, we will apply to the Hon. Aaron K. Woolley, judge of the 3d judicial district, at his chambers, in the city of Lexington, in Fayette county,

for a change of venue of the suit in chancery now depending in the Harrison circuit court, in which you are complainants and we are defendants.

Respectfully yours,

WILLIAM A. WITHERS, and
BENJAMIN BRANDON.

June 27th, 1842.

We accept the service of the within notice, June 28th, 1842.

G. H. PERRIN,
G. RENNINGTON.

I hereby certify, that Cincinnatus Brandon did make oath that he did deliver a true copy of the within to Daniel Shawhan and John L. Shawhan, on the 29th and 30th days of June.

Given under my hand, this 5th day of July, 1842.

WM. ENGLISH, *J. P. H. C.*

Messrs. John L. Shawhan, Daniel Shawhan, Greenup Rennington, George H. Perrin, and the President, Directors and Company of the Bank of Kentucky—

Please to take notice that, on Saturday, the 9th day of July, 1842, between the hours of 6 o'clock, A. M., and 6 o'clock, P. M., of that day, we will apply to the Hon. Aaron K. Woolley, judge of the 3d judicial district, at his chambers, in the city of Lexington, in Fayette county, for a change of venue of the suit in chancery now depending in the Harrison circuit court, in which you are complainants and we are defendants.

Respectfully yours,

WILLIAM A. WITHERS,
BENJ. BRANDON.

I have been served with a true copy of the above notice, this 30th day of June, 1842.

JAMES GUTHRIE,
Acting president of the Bank of Ky.

I delivered James Guthrie a copy of the above notice. I knew him to be acting president of the Bank of Kentucky, and witnessed his signature to the above acknowledgement of service of notice.

CHAPMAN COLEMAN.

Louisville, 30*th June*, 1842.

Lexington, *July* 9*th*, 1842.

The venue in the within case is hereby changed to the county of Bourbon, and the clerk of the Harrison circuit court is directed to transfer the papers of said suit to the clerk of the Bourbon circuit court, upon the petitioners complying with the requisitions of the law.

A. K. WOOLEY,
Judge of the 3d J. D. Ky.

Complainant's costs:		Defendants' costs:	
Clerks	$3 38	Clerk	$3 18½
Sheriff	0 83½	Justices	9 25
Witness	5 00	Witnesses	3 50
Justices	7 00	Fees for removal	1 50
Constable	2 49		$17 33½
	$18 70½		

Fees for transcript taxed in costs.

HARRISON COUNTY, *sct:*

I, Thomas B. Woodyard, clerk of the court aforesaid, do hereby certify, that this, together with foregoing five pages, contain a full, true, and complete copy of the orders in the suit therein named, during its pendency in this court, together with true copies of the petition for change of venue, the notices and order of the judge, and a statement of the plaintiff's and defendants' costs.

In testimony whereof I have hereunto set my hand, this 13th day of July, 1842, and in the 51st year of the commonwealth.

THOS. B. WOODYARD, *Clerk*,
By J. M. DEARBORNE, *D. C.*

The following answers were filed during the pendency of the above suit, while in the Harrison circuit court, which are not noted of record among the orders, but were read on the trial of the cause, and are filed with the papers.

The separate answer of Benjamin Brandon to a bill in chancery, filed against him and William A. Withers in the Harrison circuit court, by John L. Shawhan, Benjamin Berry, John Hodges, the President, Dirrctors & Company of the Bank of Kentucky, the President, Directors and Company of the Northern Bank of Kentucky, Isaac Miller, William Griffith, Daniel Shawhan, Greenup Rennington, and George H. Perrin, who, saving and reserving all manner of exceptions to said bill, for the errors and untruths therein contained, for answer thereto, or to so much thereof as he is advised is material, answering, says:

He admits that the complainant, John L. Shawhan, is bound as the security of this defendant, to the complainant, Benjamin Berry, in about the sum of $1,340, due by note, and that said John L. Shawhan, together with a certain William Gray and John Lail, is bound as security for this defendant to the President, Directors and Company of the Bank of Kentucky in about the sum of $800, and that said John L. Shawhan and this defendant are jointly bound to the President, Directors and Company of the Northern Bank of Kentucky, in about the sum of $750, of which about $550 ought to be paid by this defendant, and the remaining $200 by said John L. Shawhan. He admits the complainant, John L. Shawhan, is bound as the security of this defendant to the complainant, John O. Hodges, in about the sum

of $425. He admits that said John L. Shawhan, together with a certain John Lail, are bound as security for this defendant to the complainant, Isaac Miller, in about the sum of $800. He admits that said John L. Shawhan is bound as the security of this defendant to the complainant, William Griffith, in about the sum of $790. He admits that said John L. Shawhan is bound as the security of this defendant to Alexander Lewis, in the sum of about $800; and that Thomas Snodgrass is also co-security with said John L. Shawhan in said debt; he admits that said John L. Shawhan is bound as the security of this defendant, to the complainant, George H. Perrin, in a debt upon which some payment has been made, the balance of which is not remembered by this defendant. He also admits that he is indebted to the complainant, John L. Shawhan, in about the sum of $842, $394, $1,000, $1,000, $1,000, evidenced by notes which will shew the true sums due, and when payable; and which notes he supposes and believes are in the possession of said John L. Shawhan. This defendant admits that he is indebted to the complainant, John L. Shawhan, in the sum of about $1,372, due by note, on which some payments have been made, and that the balance of said note may amount to from $1,000 to $1,100. But this defendant does not remember what the balance on said notes may amount to. He also admits that said John L. Shawhan stands jointly bound with this defendant to various persons on partnership transactions, but this defendant does not think the sum amounts to $4,000 or to $3,500, but from the best recollection of this defendant he thinks the sum amounts to very nearly $3,500. This defendant admits *that he admits* the deed of trust in the bill mentioned, and *this* states that the complainant John L. Shawhan was present while said deed of trust was preparing, and expressed himself well pleased with its provisions, and after said deed was executed he again expressed his approbation and satisfaction of its terms and provisions; and this defendant most positively denies that he executed said deed of trust either to hinder, delay, or defraud his creditors, or any one of them; on the contrary, he executed said deed of trust in good faith, believing that, by conveying his property to a trustee to sell, and pay his debts, general satisfaction would be given to his creditors; and he admits that his co-defendant Wm. A. Withers advertised said trust estate for sale at public auction for the benefit of his creditors, was going on at public auction to sell said estate for the purpose expressed in said deed of trust, and had commenced making the sale, which he would have completed, had he not been restrained by the complainants' injunction; and this defendant does verily believe the estate conveyed in trust by said deed would have sold for a sufficient sum to pay this defendant's debts, if the complainants by their injunction had not restrained the said trustee from proceeding with said sale. This defendant again denies all fraud or collusion, and having answered, prays that the complainants' injunction be dissolved, and their bill be dismissed, &c.

WALL & CURRY, *P. D.*

Sworn to before me, May 21st, 1842.

Att: A. MOORE, *C. H. C.*

The separate answer of William A. Withers to a bill in chancery, filed against him and others, in the Harrison circuit court, by John L. Shawhan and Benjamin Berry, John O. Hodges, the President, Directors and Company of the Bank of Kentucky, the President, Directors and Company of the Northern Bank of Kentucky, Isaac Miller, William Griffith, Daniel Shawhan, Greenup Rennington, and George H. Perrin, who, saving and reserving all manner of exception to said bill on account of the many errors, falsehoods, and insufficiencies in said bill contained, for answer thereto, or to so much thereof as he is advised is material to be answered, answering, says: that of his own knowledge he knows nothing about the liabilities incurred by complainant John L. Shawhan as the security of his defendant Brandon; nor does he know any thing of his own knowledge about the debts alleged by the complainants to be due from his co-defendant Brandon, to them respectively, and therefore proof. All the information this defendant has received on that subject, he has obtained from his co-defendant Brandon, to whose answer this draft refers, (see it copied pages 17, 18, 19, and 20,) as containing all the information on that subject that this defendant could give. This defendant admits the execution of the deed of trust in the bill mentioned; and this defendant states that the complainant John L. Shawhan was present while said deed of trust was being drawn, approved of its terms, and advised its execution, and after said deed of trust was executed, he expressed himself well satisfied with its terms and provisions; but this defendant denies that said deed of trust was executed either to hinder, delay, or defraud the creditors of said Brandon, or any one or more of them; on the contrary, so far as this defendant knows, and as he believes, said deed of trust was executed in good faith, for the purpose of having the estate thereby conveyed, sold to the best advantage, and the proceeds of the sale, so far as necessary, applied in the payment of said Brandon's debts; and this defendant states, that he accepted said trust without fraud or covin, and in good faith intended faithfully to discharge the duties assigned him by said deed; that he was proceeding to sell said trust estate, agreeably to the promises of said deed, and when he had sold a few articles, was restrained by the complainant's injunction, and unless so restrained, he believes the trust estate would have sold for a sum sufficient to pay Brandon's debts. This defendant having answered all that he is advised is material, again denies all fraud and collusion, and prays that the complainant's injunction be dissolved, his bill dismissed, and that this defendant recover his costs, &c.

WALL & CURRY, *P. D.*

Sworn to before me, May 21st, 1842.

A. MOORE, *C. H. C. C.*

Orders made in the Bourbon circuit court, July 22d, 1842.

On motion of the complainants, leave is given them to amend their bill, which is done, and filed. The said amended bill is as follows:

To the honorable the judge of the Bourbon circuit court sitting in chancery.

Your orators, John L. Shawhan, and Benjamin Berry, Isaac Miller, Daniel Shawhan, senior, Greenup Rennington, George H. Perrin, John Shawhan, senior, John Lail, William Gray, and John Douglass, respectfully represent: that heretofore a suit was commenced in the Harrison circuit court, in which your orators John L. Shawhan, and others, were complainants, and Benjamin Brandon and William A. Withers were then, and still are, defendants, which suit has been removed to this court by change of venue. That before said suit was removed to this court, and while the same remained in the Harrison circuit, Wm. K. Wall appeared in said court as attorney of said Wm. Griffith, who was one of the complainants, and John O. Hodges was another of the complainants, in said original bill, and also appeared in court, and on their motion, an order of said court was made, directing the names of said Griffith and Hodges to be stricken out as complainants in said suit. Your orators further state, that the defendant Brandon stands justly indebted to your orator, Isaac Miller, in the sum of $848, by note, which falls due the 6th day of August, 1842, in which your orators, John L. Shawhan and John Lail, stand bound as said Brandon's securities; that the defendant, Brandon, stands indebted to your orator, Daniel Shawhan, senior, in the sum of $720, by note, which fell due the 19th day of September, 1842, in which your orator, John L. Shawhan, stands bound as said Brandon's security; to which notes your orators refer as a part hereof, (note not filed.)

Your orators further state, that heretofore the defendant, Benjamin Brandon, with your orator, John L. Shawhan, as his security, executed a note to Catherine Snodgrass, for the sum of $215 18 cents, which note fell due the 30th October, 1841; that afterwards, your orator, George H. Perrin, an assignee of said Catherine Snodgrass, commenced a suit on said note in the Harrison circuit court, and at the June term thereof, in the year 1842, recovered a judgment thereon against said defendant Brandon and your orator, John L. Shawhan, for the sum of $215 18 cents, with interest and costs, subject to a credit for $100, paid December 17th, 1841, and $20 paid day of . The above being the same debt mentioned in the original bill as a debt in which your orator, John L. Shawhan, stands bound as the security of said Brandon, to your orator, George H. Perrin, in the sum of about $100. To a transcript of the record and proceedings to said suit, in which said judgement was rendered, including the fi. fa. which issued thereon, together with the sheriff's return, and the other endorsements on said fi. fa., your orators refer as a part hereof. Your orator further states, that heretofore the said defendant Brandon, with Thomas Snodgrass, and your orator, John L. Shawhan, as his securities, executed a note to Alexander Lewis, for the sum of $749 51 cents, which *which* note fell due the 1st May, 1840, and is the same note mentioned in the original bill as a note executed to Alexander Lewis for about $800. That afterwards, the said Alexander Lewis departed this life, and administration

of his estate was granted to your orator, Greenup Rennington, who afterwards assigned said note to Catherine Snodgrass, who is executrix of said Thomas Snodgrass, who has also departed this life; and thereupon the said Catherine Snodgrass commenced a suit on said note against the defendant Brandon, and your orator, John L. Shawhan, in the Harrison circuit court; and at the June term thereof, in the year 1842, a judgment was rendered on said note against said defendant Brandon, and your orator, John L. Shawhan, for said sum of $749 51 cts., with interest and costs, subject to a credit of $50, paid June 29th, 1840. To a transcript of the record and proceedings in the suit in which said judgement was rendered, including the fi. fa. which issued thereon, together with the sheriff's return, and other endorsements on said fi. fa., your orators refer as a part hereof.

Your orators further state, that heretofore the defendant, Benjamin Brandon, with your orator, John L. Shawhan as his security, executed a note to your orator, Benjamin Berry, for the sum of $1377 66, which note fell due the 12th of May, 1842; that your orator, Benjamin Berry, commenced a suit on said note in the Harrison circuit court, and at the June term of said court, in the year 1842, recovered a judgement against the defendant Brandon, and your orator, John L. Shawhan, for the amount thereof, with interest and costs, it being the same note mentioned in the original bill as a note to your orator Benjamin Berry, for about $1340; to a transcript of the record of the suit in which said judgement was rendered, including the fi. fa which issued thereon, together with the sheriff's return, and other endorsements on said fi. fa., your orators refer as a part hereof.

Your orators further state, that heretofore the defendant Brandon, with your orator, John L. Shawhan, and John Douglass, as his securities, executed a note to John O. Hodges, for the sum of $432 81 cts., which note will be due the 1st day of March, 1843, which is the same note mentioned in the original bill as a note to John O. Hodges for about the sum of $425, and your orators expresly state, that the aforesaid judgement and the said note to John O. Hodges yet remain wholly unpaid. Your orators further state, that heretofore the defendant Brandon executed his note to the President, Directors and Company of the Bank of Kentucky, with your orators, John Lail, John L. Shawhan, and William Gray, his securities, for the sum of $800, which note fell due the 2nd day of July, 1842; that after said note fell due, and after the commencement of this suit, your orators, John Lail, John L. Shawhan, and William Gray, paid off and satisfied said note by executing their own note to said bank in lieu of said note in which your orators so stood bound as said Brandon's securities; said note for $800, so paid by your orators, being the same note for that sum mentioned in the original bill; your orators refer to said note so paid and satisfied by them, and pray that the same may be taken as a part hereof. Your orators further state, that heretofore the defendant Brandon, and your orator, John L. Shawhan, executed their note to the President, Directors and Company of the Northern Bank of Kentucky, with your orator, John Lail, as their security, for the sum of $1500, which note fell due in June, 1842; that after said note fell due,

your orators, John L. Shawhan, John Lail, and John Shawhan, sen., paid off and discharged said note by executing their own note to said bank for the same amount, in lieu of the said first note; your orators further state, that said note, which was so satisfied by your orators, was the joint note of said defendant Brandon, and your orator John L. Shawhan, and your orator John Lail, were their security in said note, and consequently one half of said sum of $1500 was the proper debt of your orator, John L. Shawhan, and the other part was the proper debt of the defendant, Brandon, and in the original bill the defendant Brandon's portion of said debt is mentioned as a debt for which your orator, John Shawhan, stands bound as the security of said Brandon to the President, Directors and Company of the Northern Bank of Kentucky in the sum of $750, to which note your orators refer as a part hereof. Your orators further state, that heretofore the said defendant Brandon, and your orator, John L. Shawhan, executed their note to the President, Directors and Company of the Northern Bank of Kentucky for the sum of $300, with your orator, John L. Shawhan, sen'r, and Daniel Shawhan, sen'r, their securities, which note fell due the 29th of April, 1842; and after said note fell due, your orator, John L. Shawhan, paid and satisfied said note by executing his own note to the said bank, dated the 29th day of April, 1842, for said sum of $300, with your orator, John Shawhan, sen'r, and Daniel Shawhan, sen'r, his securities. Your orators refer to said note, so paid and satisfied by them, and pray that the same may be taken as a part hereof. Your orator, John L. Shawhan, states, that on the 19th day of February, 1841, the defendant, Brandon, executed his note to your orator for the sum of $1,372 56 cents, payable five months after date, on which the following credits are endorsed, to wit: January 11th, 1842, received on the within note $77 25 cents; March 31st, 1842, on the within note, $207 98; which is the same note mentioned in the original bill of the same date, and on which the original bill alleges there is about $1200 unpaid. Your orator states, that the balance of said note yet remains unpaid, after deducting from the amount thereof the above credits, which are endorsed thereon; to which note, with the endorsements thereon, your orators refer as a part hereof. Your orators also refer to all the notes mentioned in the original bill as having been executed by the defendant, Brandon, to your orator, John L. Shawhan, and pray they may be taken as a part hereof. Your orator, John L. Shawhan, further states, that he has taken up and satisfied the following debts of the late firm of Brandon & Shawhan, to wit: a note to Samuel P. Dils for $407 16, dated 12 November, 1840, and payable on or before the 1st day of March next after the date; a note to Silas Sparks for $46 65, dated the 4th of October, 1841, and due one day after date; and a note to James Skinner for $211 85 cents, dated the 23d of July, 1841, and due one day after date, subject to a credit of $20 paid by said Brandon, and credited the 1st of January, 1842, and for which sum of $20 your orator has settled with the defendant Brandon; a note to Joseph Shawhan, sen'r, for $2,167, dated the 5th of July, 1841, and payable on or before the

first day of January next after the date; which note is credited by the sum of $286 of unlawful interest, which credit was voluntarily given by the said Joseph Shawhan, sen'r, on the 18th day of April, 1842, and the balance of the note was satisfied by your orator; to which notes, with the endorsements thereon, your orators refer as a part hereof.

Your orator, John L. Shawhan, further says, that he has secured to William Hall a debt of said late firm of Brandon & Shawhan, amounting to about $140, so that your orator has paid and secured greatly above the amount of his proportion of the debts of said firm. And your orators further state, that a large portion of the balance of the debts of said firm yet remain unpaid. Your orators further state, from information and belief, that the deed of trust, mentioned in said original bill, was made by the defendant Brandon, and accepted by the defendant Withers, for the purpose of hindering, delaying, defrauding, and obstructing the creditors of the said Brandon, and especially your orator, John L. Shawhan, in the collection of their just debts and demands; and that said deed of trust was made to the great prejudice of the previous rights of your orator, John L. Shawhan, as the security of said Brandon. Your orators further state, that they have detailed the foregoing facts partly from their own knowledge, and partly from the information of others, and they believe the statements made by them are substantially true. Your orators therefore pray, that this may be taken as an amendment to said original bill; that the said Catharine Snodgrass, William Griffith, John O. Hodges, the President, Directors and Company of the Bank of Kentucky, the President, Directors and Company of the Northern Bank of Kentucky, may be made defendants to this and the original bill, and this amendment; that they may answer the allegations hereof, and that your orators may have such relief as prayed for in the original bill.

TRIMBLE & ROBINSON.

BOURBON COUNTY, *sct:*

This day came the above named John L. Shawhan, before me, a justice of the peace for the county aforesaid, and made oath, that the statements contained in the foregoing amended bill, so far as they are detailed from his own knowledge, are true, and that so far as they are detailed from the information of others he believes them to be true.

Given under my hand, this 22d day of July, 1842.

E. THURSTON.

The exhibits referred to in the foregoing amended bill are as follows, to wit:

KENTUCKY, *sct:*

Pleas before the honorable Henry O. Brown, judge of the Harrison circuit court, at the court house in Cynthiana, on the 17th day of June, 1842.

GEORGE H. PERRIN, assignee,
against
BENJ'N BRANDON, AND JOHN L. SHAWHAN.
Upon petition and summons.

Be it remembered, that heretofore, to wit, on the 26th day of May,

1842, the above named George H. Perrin, by William W. Trimble, his attorney, filed in the clerk's office of this honorable court his certain petition against the above named Brandon and Shawhan, in the words and figures following, to wit:

HARRISON COUNTY, *sct:*

George H. Perrin, assignee of Catharine Snodgrass, plaintiff, states, that he holds a note on Benjamin Brandon and John L. Shawhan, as follows: Twelve months after date we, or either of us, promise to pay to Catharine Snodgrass, executrix of the estate of Thos. Snodgrass, dec'd, $215 18 cts., for value received.

Witness our hands and seals, this 30th day of October, 1840.

BENJAMIN BRANDON, [SEAL.]
JOHN L. SHAWHAN. [SEAL.]

Attest:
CARY A. WARD.

On which is the following assignment—

"I assign the within note to George H. Perrin, this 24th day of May, 1842.

her
CATHERINE ⋈ SNODGRASS.
mark.

REUBEN ODER.

Whereby the plaintiff hath become the proprietor thereof, of which the defendant hath had due notice, yet the said debt remains unpaid; wherefore he prays judgment, for his debt and damages for the detention of the same, together with his costs, &c.

WM. W. TRIMBLE.

The Commonwealth of Kentucky, to the sheriff of Harrison county, greeting:

We command you to summon Benjamin Brandon and John L. Shawhan, to appear before the judge of our Harrison circuit court, at the court house in Cynthiana, on the 1st day of our next June term, to answer unto the petition of George H. Perrin, assignee of Catharine Snodgrass, of a plea of debt of $215 18 cts.; and this they shall in no wise omit, under the penalty of £100 each, and have then there this writ.

Witness, Andrew Moore, clerk of our said court, this 26th day of May, 1842, and in the 50th year of the commonwealth.

A. MOORE.

Executed May 27th, 1842.

M. D. MOORE, *D. S.*
For JOHN WAITS, *S. H. C.*

At a circuit court, held for the county of Harrison, on the 17th day of June, 1842, came the plaintiff, by his attorney, and the defendants, altho' solemnly called, came not, but made default. Therefore it is considered by the court, that the plaintiff recover against the defendants

the sum of $215 18 cents, the debt in the petition mentioned. with interest thereon, at the rate of six per cent. per annum, from the 30th day of October, 1841, until paid; and also his costs herein expended. This judgement is entitled to a credit of $100, paid December, 1840, and $20 paid day of

The Commonwealth of Kentucky, to the sheriff of Harrison county, greeting:

We command, that of the estate of Benjamin Brandon and John L. Shawhan, late of your bailiwick, you cause to be made the sum of $215 18 cents, with interest thereon, at the rate of 6 per cent. per annum, from the 30th day of October, 1841, until paid, which late in our Harrison circuit court was adjudged to George H. Perrin, assignee, for debt, also $6 38½ cents costs herein expended, whereof the said Brandon and Shawhan are convict, as appears to us of record; and that you have the same before the judge of our said court, at the court house in Cynthiana, on the Saturday succeeding the second Monday in August next, to render to the said Perrin of the debt and costs aforesaid, and have then there this writ.

Witness Andrew Moore, clerk of our said court, this 27th day of June, 1842, and in the 51st year of the commonwealth.

T. B. WOODYARD, *Clerk.*
By J. M. DEARBORNE, *D. C.*

This execution is entitled to a credit of $100, paid December 17th, 1841, per endorsement on note.

Att: T. B. WOODYARD, *Clerk.*
By J. M. DEARBORNE, *D. C.*

Came to hand half-past 5 o'clock, P. M., June 27th, 1842.

A. L. THOMSON, *D. S.*
For JOHN WAITS, *S. H. C.*

No property found, August 13th, 1842.

M. D. MOORE, *D. S.*
For JOHN WAITS, *S. H. C.*

KENTUCKY, *sct: Harrison county.*

I, Thos. B. Woodyard, clerk of the circuit court, for the county aforesaid, certify *that* the foregoing to be a true, full, *an* complete transcript of the record and execution in the case therein named.

Given under my hand, this 17th day of October, 1842.

T. B. WOODYARD, *Clerk.*
By J. M. DEARBORNE, *D. C.*

STATE OF KENTUCKY, *sct:*

Pleas at the court house in Cynthiana, in the county of Harrison, before the honorable Henry O. Brown, judge of the Harrison circuit court, on the 17th day of June, 1842.

BENJAMIN BERRY,
against
BENJ. BRANDON & JOHN L. SHAWHAN.

Upon petition and summons.

Be it remembered, that heretofore, to wit, on the 25th day of May, 1842, the above named Benjamin Berry, by William K. Wall, his attorney, filed in the clerk's office of this honorable court his certain petition, in the words and figures following, to wit:

Benjamin Berry, plaintiff, states that he holds a note on the defendants, Benjamin Brandon and Jno. L. Shawhan, in substance as follows:

$1377 60.

On or before the 12th day of May, 1842, we, or either of us, promise to pay Benjamin Berry or order, $1,377 60, for value rec'd this 12th day of May, 1841.

BENJAMIN BRANDON,
JOHN L. SHAWHAN.

Yet the said debt remains unpaid, wherefore [he] prays judgement for his debt and damages for the detention of the same, together with his costs, &c.

WALL, *P. Q.*

The Commonwealth of Kentucky, to the sheriff of Harrison county, greeting:

We command you to summon Benjamin Brandon and John Shawhan, to appear before the judge of our Harrison circuit court, at the court house in Cynthiana, on the first day of our next June term, to answer unto the petition of Benjamin Berry, of a plea of debt of $1,377 60 cents, and this they shall in no wise omit, and have then there this writ.

Witness Andrew Moore, clerk of our said court, this 25th day of May, 1842, and in the 50th year of the commonwealth.

A. MOORE.

Executed on Benja. Brandon, May 26th, and on John L. Shawhan, May 27, 1842.

M. D. MOORE, *D.*
For JOHN WAITS, *S. H. C.*

And now, on this day, to wit, at circuit court held for the circuit and county of Harrison, in Cynthiana, on Friday morning, June 17, 1842.

This day came the plaintiff by his attorney, and the defendants, altho' solemnly called, came not; therefore it is considered by the court, that the plaintiff recover of the defendant the sum of $1377 60 cents, the debt in the petition mentioned, with interest thereon, at the rate of 6 per cent. per annum, from the 12th day of May, 1842, until paid, and his costs herein expended.

The Commonwealth of Kentucky, to the sheriff of Harrison county, greeting:

We command you, that of the estate of Benjamin Brandon and John L. Shawhan, late of your bailiwick, you cause to be made the sum of thirteen hundred and seventy-seven dollars sixty cents, with interest thereon, at the rate of 6 per cent. per annum, from the 12th day of May, 1842, till paid, which late in our Harrison circuit court was adjudged to Benjamin Berry for his debt, also, $6 13½ cents costs, herein expended, whereof the said Brandon and Shawhan are convict, as appears to us of record; and that you have the same before the judge of our Harrison circuit court, at the court house in Cynthiana, on the Saturday succeeding the second Monday in August next, to render to the said Berry of the debt and costs aforesaid, and have then and there this writ.

Witness Thomas B. Woodyard, clerk of our said court, this 29th day of June, 1842, and in the 51st year of the commonwealth.

T. B. WOODYARD, *Clerk*,
By J. M. DEARBORNE, *D. C.*

Came to hand, June 30th, about 10 o' clock, P. M., 1842.

M. D. MOORE, *D. S.*
For JOHN WAITS, *S. H. C.*

No property found.

M. D. MOORE, *D. S.*
For JOHN WAITS, *S. H. C.*

A copy.
Att:

T. B. WOODYARD, *Clerk*,
By J. M. DEARBORNE, *D. C.*

STATE OF KENTUCKY, *Harrison county, sct:*

I, Thos. B. Woodyard, clerk of the circuit court for the county aforesaid, certify, that the foregoing three pages, including this, contain a full, true, and complete transcript of the record therein named, as the same remains of record in my office.

Given under my hand this 15th day of October, 1842.

THOS. B. WOODYARD, *Clerk*.
By P. F. BROWN, *Deputy*.

KENTUCKY, *sct:*

Pleas at the court house in Cynthiana, before the honorable Henry O. Brown, judge of the Harrison circuit court, on the 17th day of June, 1842.

CATHARINE SNODGRASS, assee.
agt.
BENJAMIN BRANDON & JOHN L. SHAWHAN, survivors of Benjamin Brandon, John L. Shawhan, and Thomas Snodgrass. } In debt.

Be it remembered, that heretofore, to wit, on the 2d day of June,

1842, the above named Catharine Snodgrass, by James R. Curry, esq., her attorney, filed in the clerk's office of this honorable court her certain declaration in debt, against the above named Brandon & Shawhan, in the words and figures following, to wit:

HARRISON CIRCUIT, *to wit:*

Catharine Snodgrass complains of Benjamin Brandon and John L. Shawhan, survivors of Benjamin Brandon, John L. Shawhan, and Thos. Snodgrass, in custody, &c., of a plea that said defendants render to said plaintiff the sum of $749 81, which they owe to and unjustly detain from her; for that said defendants, with Thomas Snodgrass, who has since departed this life, heretofore, to wit, on the 21st day of September, 1839, by their certain writing obligatory, signed with their names, and sealed with their seals, and now here to the court shewn, the day whereof is the day and year aforesaid, promised, that on or before the 1st day of May next thereafter, that they, or either of them, would pay to a certain Alexander Lewis, who has since departed this life, the said sum of $749 81 above demanded; and whereas Greenup Rennington, the administrator of said Alexander Lewis, deceased, by a written assignment on the back of said writing obligatory, signed with their proper names, and now here to the court assigned and transferred said writing obligatory to the plaintiff, of which the defendants have had due notice, to wit, at the county and circuit aforesaid; yet they, the said defendants, and Thomas Snodgrass did nor did either of them, pay said sum of $749 81 above demanded, or any part thereof, to said Alexander Lewis, since, or at any time during his life; nor did they, or either of them, after the death of said Alexander Lewis, deceased, pay said sum of $749 81, or any part thereof, to said Greenup Rennington, adm'r as aforesaid, at any time before he assigned said writing obligatory to the plaintiff; nor have they, the said defendants, and Thos. Snodgrass, deceased, or either of them, paid the said sum, or any part thereof, to the plaintiff at any time since said assignment. But to pay said sum of $749 81 above demanded, or any part thereof, they, the said defendants, and Thos. Snodgrass, and each of them, during the life of said Thomas Snodgrass, and they the said defendants, and each of them, since the death of said Thomas Snodgrass, to the said Alexander Lewis during his life, or to the said adm'rs after the death of said Lewis, and before said assignment, or to the plaintiff since said assignment, have hitherto wholly neglected and refused, and still do neglect and refuse so to do, to the damage of the plaintiff of $250, and therefore she sues.

CURRY, *P. Q.*

The Commonwealth of Kentucky, to the sheriff of Harrison county, greeting:

We command you to take Benjamin Brandon and John L. Shawhan, survivors of Benjamin Brandon, John L. Shawhan, and Thomas Snodgrass, if to be found in your bailiwick, and them safely keep, so

that you have their bodies before the judge of our Harrison circuit court, at the court house in Cynthiana, on the first day of our next June term, to answer unto Catharine Snodgrass of a plea of debt of $749 80, and have then there this writ.

Witness Andrew Moore, clerk of our said court, this 2d day of June, 1842, and in the 51st year of the commonwealth.

A. MOORE.

Memo.

This is an action of debt on a writing obligatory under seal, and no bail is required.

CURRY, *P. Q.*

Executed June 2d, 1842.

M. D. MOORE, *D. S.*
For JOHN WAITS, *S. H. C.*

At a circuit court held for the county of Harrison, on the 17th day of June, 1842, came the plaintiff, by her attorney, and the defendants, altho' solemnly called, came not; therefore it is considered by the court, that the plaintiff recover against the defendants the sum of $749 81 cents, the debt in the plaintiff's declaration mentioned, with interest hereon, at the rate of 6 per cent. per annum, from the 2 st day of May, 1840, until paid, and also the costs herein expended.

This judgment is entitled to a credit of $50, paid June 29th, 1840, per endorsement on note.

The Commonwealth of Kentucky, to the sheriff of Harrison county, greeting:

We command you, that of the estate of Benjamin Brandon and John L. Shawhan, late of your bailiwick, you cause to be made the sum of $749 81 cents, with interest thereon at the rate of 6 per cent. per annum from the 21st day of May, 1840, until paid, which late in our Harrison circuit court was adjudged to Catharine Snodgrass for debt, also $6 38½ costs herein expended, whereof the said Brandon and Shawhan are convict, as appears to us of record; and that you have the same before the judge of our said court, at the court house in Cynthiana, on the Saturday succeeding the second Monday in August next, to render to the said Snodgrass of the debt and costs aforesaid, and have then there this writ.

Witness Thomas B. Woodyard, clerk of our said court, this 30th day of June, 1842, and in the fifty-first year of the commonwealth.

T. B. WOODYARD, *Clerk.*
By J. M. DEARBORNE, *D. C.*

This execution is entitled to a credit of $50, paid June 29th, 1840, per endorsement on note.

Att: T. B. WOODYARD, *Clerk.*
By J. M. DEARBORNE, *D. C.*

Came to hand June 30th, about 1 o'clock, P. M., 1842.

M. D. MOORE, *D. S.*
For JOHN WAITS, *S. H. C.*

No property found. August 15th, 1842.

M. D. MOORE, *D. S.*
For JOHN WAITS, *S. H. C.*

KENTUCKY, *sct.*
Harrison county:

I, Thomas B. Woodyard, clerk of the circuit court for the county aforesaid, certify the foregoing five pages to contain a full, true, and complete record and execution in the case therein named.

Given under my hand this 18th day of October, 1842.

T. B. WOODYARD,
By J. M. DEARBORNE, *D. C.*

Five months after date, I promise to pay John L. Shawhan $1,372 56 cents, for value rec'd this 19th day of Feb'y, 1841.

BENJAMIN BRANDON.

Upon said note are the following credits, viz:

March 31st, 1842. On the within note two hundred and seven dollars and 98 cents.

January 11th, 1842. Received on the within note seventy-seven dollars and twenty-four cents.

Note No. 2.

On or before the 1st day of March next, I promise to pay John L. Shawhan $349 00, for value received this 20th day of July, 1841.

BENJ'N BRANDON.

Do. No. 3.

On or before the 25th day of December, 1842, I promise to pay John L. Shawhan, or order, $1,000, for value received this 18th day of August, 1840.

BENJ'N BRANDON.

Do. No. 4.

On or before the 25th day of Dec'r, 1841, I promise to pay John L. Shawhan $1,000, for value received this 17th day of March, 1842.

BENJ'N BRANDON.

Do. No. 5.

On or before the 1st day of March, 1843, I promise to pay John L. Shawhan $842, for value received this 17th day of March, 1842.

BENJ'N BRANDON.

October 22d, 1842.

The complainants filed an amended bill in this cause; on motion of the complainants, they are permitted to file an amended bill herein, by which, among other things, Catharine Snodgrass is made a co-complainant herein, which bill was accordingly filed. John O. Hodges and William Griffith each entered their appearance, and by consent of parties, all the allegations of the two last amended bills herein filed, which charge that the deed of trust from the defendant Brandon to the defendant Withers was made to hinder, delay, and defraud the creditors, or any of them, of the said Brandon, or which charge fraud in any way against the defendants, shall, upon the trial of this cause, be taken and considered as being fully denied upon oath by said Brandon and Withers; and by consent of all parties, this cause came on to be heard *up* the bill, amended bills, answer and exhibits. After hearing the arguments of counsel, the court delivered the following decree. Defendant's counsel excepted to all the statements detailed by the witnesses of complainants, as to statements made by defendant Brandon, after the execution of said deed, which exception was sustained by the court. The court, after hearing the arguments of counsel, delivered a decree in this cause, which is filed among the papers, and by consent of parties it is not to be spread at large on the record book, but is to constitute a part of the record, and is to be copied in making out a copy of the record of this suit for court of appeals.

(See decree, page 50, 51, 52, 53, 54, 55.)

The amended bill is as follows:

To the honorable the judge of the Bourbon circuit court, in chancery sitting.

Your orators, John L. Shawhan, Benjamin Berry, Isaac Miller, Daniel Shawhan, George H. Perrin, John Shawhan, sen'r, John Lail, William Gray, and John Douglas, and your oratrix, Catharine Snodgrass, respectfully represent:

That heretofore a bill in chancery was filed in the Harrison circuit court, in which your orators, John L. Shawhan, Benjamin Berry, Isaac Miller, Danl. Shawhan, sen., George H. Perrin, together with the President, Directors and Company of the Northern Bank of Kentucky, William Griffith, Greenup Rennington, and John O. Hodges were complainants, and Benjamin Brandon and William A. Withers were defendants, which suit was afterwards removed to this court by change of venue; that before said suit was removed to this court, William K. Wall appeared in court as attorney of the said President, Directors and Company of the Northern Bank of Kentucky, and as attorney of the said William Griffith, and at the same time the said John O. Hodges appeared in his proper person; and on motion of the said Wall & Hodges, it was ordered, that the names of the said President, Directors and Company of the Bank of Kentucky, and the names of the said Griffith and Hodges, should be stricken out as complainants.

Your orators further state, that heretofore the said Benjamin Brandon,

with your orators, John Lail, John L. Shawhan, and William Gray, as his securities, executed a note to the President, Directors & Company of the Northern Bank of Kentucky for the sum of $800, which note fell due the 2d day of July, 1842; that a short time after said note fell due, your orators, John Lail, John L. Shawhan, and William Gray, executed a note to said bank, and sent it to bank for discount, for the purpose of satisfying said note, in which they stood bound to said bank as the security of the said Brandon; and afterwards, your orator, John L. Shawhan, was informed and did believe, that said note had been discounted by said bank, and that thereby said note, in which your orators stood bound as the security of said Brandon to said bank, had been satisfied, and in an amended bill heretofore filed in this case your orators have so stated the fact to be from information and belief. But since that time your orators have been informed, and now state from information and belief, that said bank refused to discount said note so executed by them. Your orators further state, that on the 13th of August, 1841, the defendant, Benjamin Brandon, drew a bill of exchange upon your orator, John L. Shawhan, for the sum of $1500, payable to the order of your orator, John Lail, at Columbia, South Carolina, six months after the date thereof, which bill was afterwards accepted by your orator, John L. Shawhan, and endorsed by your orator, John Lail, to Matthew T. Scott, cashier; that said bill was discounted by the Northern Bank of Kentucky, and was afterwards duly protested for non-payment on the 16th day of February, 1842, to which bill of exchange and protest your orators refer as a part hereof. Your orators further state, that said bill of exchange was drawn, accepted, endorsed, and discounted, for the joint benefit of your orators, John L. Shawhan, and the defendant, Brandon; and that on the 14th of August, 1841, your orator, John L. Shawhan, and the defendant, Brandon, executed a written agreement, as follows:

August 14th, 1841. It is understood that the bill sold at the Northern Bank at Lexington, for $1500, payable at Columbia, South Carolina, six months after the 13th of August, is jointly to be paid by Benjamin Brandon and John L. Shawhan, to which agreement your orators refer as a part hereof.

Your orators further state, that after the aforesaid bill of exchange was protested, your orator, John L. Shawhan, and the defendant, Brandon, executed a note, with your orator, John Lail, their security, for the sum of $1500, payable to the President, Directors & Company of the Northern Bank of Kentucky, which note fell due in June, 1842, and accepted by said bank in satisfaction and discharge of said bill of exchange. That after said note fell due your orators, John L. Shawhan, John Lail, and John L. Shawhan, sen'r., paid off and satisfied said note, by executing their own note, bearing date the 19th of June, 1842, for said sum of 1500, payable to said bank four months after date, in lieu of the said first note. Your orators, John L. Shawhan, John Lail, and John L. Shawhan, sen'r., further state, that said note, which was so satisfied by your orators, was the joint note of the defendant, Brandon,

and your orator, John L. Shawhan, and that your orator, John Lail, was their security in said note; consequently, one-half of said sum of $1500 was the proper debt of your orator, John L. Shawhan, and the other half was the proper debt of the defendant, Brandon, and in the original bill the defendant, Brandon's, portion of said debt, is mentioned as a debt for which your orator, John L. Shawhan, stood bound as the security of the said defendant, Brandon, to the President, Directors & Company of the Northern Bank of Kentucky, and in the amended bill heretofore filed, the one-half of said sum of $1500, as set up as a claim against said Brandon. Your orators and oratrix, Catharine Snodgrass, states that your oratrix, as the assignee of said Greenup Rennington, commenced a suit on said note against the defendant, Brandon, and your orator, John L. Shawhan, in the Harrison circuit court, and at the June term thereof, in the year 1842, recovered a judgment thereon against the said defendant, Brandon, and your orator, John L. Shawhan, for said sum of $749 51 cts., with interest and costs, subject to a credit of $50, paid June 29, 1840, upon which a fi. fa. was issued, directed to the sheriff of Harrison county, upon which the sheriff made the following return, to wit, "no property found;" to a transcript of the record and proceedings in said suit, including the fi. fa. and endorsements thereon, your orators and oratrix refer as a part. (See it copied page 37 to 40.) Your orators further state, that the defendant, Brandon, has not repaid to your orators, or either of them, said sums of money so paid by your orators as his security, or any part thereof, but the whole thereof remains unpaid. Your orators and oratrix pray, that this may be taken as an amendment to *his* original bill herein, and that they may have such relief as prayed for in said bill, and as to equity may belong.

J. TRIMBLE,
For compl'ts.

No. 4166.

Exchange for $1500. LEXINGTON, *August* 13, 1841.

Six months after date of this first of exchange, second of same tenor and date unpaid, pay to the order of John Lail fifteen hundred dollars, payable at Columbia, South Carolina, value received, and charge the same to account of—

Very respectfully, your obedient servant,
BENJAMIN BRANDON.

To JOHN L. SHAWHAN,
Columbia, South Carolina.

Accepted. JOHN L. SHAWHAN.

Endorsed—Pay M. T. Scott, or order.
JOHN LAIL.

Pay B. D. Boyd, esq., cashier, or order.

Protest.

STATE OF SOUTH CAROLINA,
Richland district, town of Columbia:

On this the 16th day of February, A. D. 1842, and in the 66th year

of the independence of the United States of America, at the request of the President and Directors of the Commercial Bank of Columbia, South Carolina, I, John T. Seibeles, esq., notary public and justice of the quorum ex officio, by lawful authority, duly sworn, admitted, and commissioned by letters patent under seal of the State, residing and practising in the town of Columbia, and State aforesaid, did exhibit the original draft, whereof a true copy is on the other side written, at the several hotels in this town, and after due inquiry, John L. Shawhan, acceptor of said draft, could not be found, nor any person who would pay the same; and John L. Shawhan not being a town resident, I addressed him a notice through the post office, demanding payment of said draft, but received no answer. I then forwarded notices by mail of the non-payment, and demanded *of* payment of said draft to Benjamin Brandon, drawer, and John Lail, endorser, enclosed in a similar notice to M. T. Scott, cashier, Lexington, Kentucky.

Wherefore, I, the said notary public, at the request aforesaid, have protested, and by these presents, do solemnly and publicly protest, as well against the drawer of said draft as the endorser and endorsers, and against all whom it may concern, for exchange, re-exchange, and all costs, damages, charges, and interest, suffered or sustained, or to be suffered or sustained, for want of payment of said draft.

Thus done and protested, at Columbia aforesaid, the day and year above written.

In testimony veritatis. JOHN T. SEIBELES,
Notary public.

No. 4166. [Copy.]

Exchange for $1,500. LEXINGTON, *Aug.* 30, 1841.

Six months after date of this first of exchange, second of same tenor and date unpaid, pay to the order of John Lail, fifteen hundred dollars, payable at Columbia, South Carolina, value received, and charge the same to account of

Very respectfully, your obedient servant,
BENJAMIN BRANDON.

To JOHN L. SHAWHAN,
Columbia, South Carolina.

Accepted. JOHN L. SHAWHAN.

Endorsed—Pay to M. T. Scott, cashier, or order.
JOHN LAIL.

Pay to B. D. Boyd, esq., cashier, or order.
August 14th, 1841. M. T. SCOTT, *Cashier.*

The agreement referred to is as follows, viz:

It is understood, that the bill sold at the Northern Bank at Lexington for $1,500, payable at Columbia, South Carolina, six months after

the 13th of August, is jointly to be paid by Benjamin Brandon and John L. Shawhan.

BENJAMIN BRANDON,
October 22d, 1842. JOHN L. SHAWHAN.

On the hearing of this cause, the complainants, by their counsel, moved the court to reject the deposition of Pleasant Lilly, on the ground that it had been improperly taken; and in said motion the counsel relied entirely on matter apparent on the face of the deposition as the ground of the objection, but waiving any opinion on that point; this court is of opinion, that the deed of trust made by the defendant Brandon to the defendant Withers, as set forth in complainants' bill, is in point of law fraudulent and void as to the creditors and the securities of the said defendant Brandon; and it is therefore decreed and ordered, that said deed of trust be, and the same is hereby, annulled and set aside; and it appearing that the defendant Brandon stands indebted to the complainant, John L. Shawhan, in the sum of $1,000 by note, which fell due the 25th of December, 1841, said note bearing interest, at the rate of 6 per cent. per annum, from the time it fell due till paid; and also, in the sum of $349 by note, which fell due the 1st of March, 1842, said note bearing interest, at the rate of 6 per cent. per annum, from the time it fell due till paid; also, in the sum of $1,372 56 cents by note, which fell due the 19th of July, 1841, said not bearing interest from the time it fell due until paid, but subject to a credit of $77 44 paid January 11, 1842, and $207 98 paid the 31st of March, 1842; and it appearing that the defendant Brandon stands indebted to the complainants, John L. Shawhan, John Lail, and John Shawhan, sr., in the sum of $750, with interest thereon, at the rate of 6 per cent. per annum, from the 19th of June, 1842, on account of money paid by said complainants to the Northern Bank of Kentucky, upon a bill of exchange of $1,500, as per bill and agreement filed; and it appearing, that the defendant Brandon stands indebted to the complainants, John L. Shawhan, John Shawhan, sr., and Daniel Shawhan, in the sum of $150, with interest thereon, at the rate of 6 per cent. per annum, from the 29th of April, 1842, on account of money paid them to the Northern Bank of Kentucky for said Brandon; and it appearing that the defendant, Brandon, stands indebted to the complainant, Daniel Shawhan, sr., in the sum of $720 by note, which fell due the 19th of September, 1840, said note bearing interest at the rate of 6 per cent. per annum, from the time the same fell due till paid, and the complainant, John L. Shawhan, being the security of said Brandon, in said note; and it appearing that the defendant Brandon stands indebted to the complainant, George H. Perrin, in the sum of $215 18 cents, with interest thereon, at the rate of 6 per cent. per annum, from the 30th of April, 1841, till paid, and $6 38 costs, subject to a credit of $100, to be credited on the 1st of December, 1841, and $20 to be credited on the 30th April, 1841; and it appearing that the defendant, Brandon, stands indebted to the complainant, Benjamin Berry, in the sum of $1,377 66

cents, with interest thereon, at the rate of 6 per cent. per annum, from the 12th of May, 1842, till paid, and $6 13½ cents costs, due by judgment of the Harrison circuit court, founded on a note in which the complainant, John L. Shawhan, stands bound as the security of said Brandon; and it appearing that the defendant, Brandon, stands indebted to the defendant, William Griffith, in the sum of $697 by note, which fell due the 1st of March, 1842, said note bearing interest at the rate of 6 per cent. per annum, from the time it fell due till paid, and in which note the complainant, John L. Shawhan, stands bound as the security of said Brandon; and it appearing that the defendant, Brandon, stands indebted to the complainant, Catharine Snodgrass, in the sum of $749 81, with interest thereon, at the rate of 6 per cent. per annum, from the 21st May, 1840, till paid, and $6 38½ cents costs, subject to a credit of $50, paid June 29, 1840, due by judgment of the Harrison circuit court, founded on a note in which the complainant, John L. Shawhan, stands bound as the security of the said Brandon; and it appearing that the defendant, Brandon, stands indebted to the complainant, Isaac Miller, in the sum of $848, with interest thereon, at the rate of 6 per cent. per annum, from the 9th day of August, 1842, till paid, due by judgment of the Harrison circuit , founded on a note in which the complainants, John L. Shawhan and John Lail, stand bound as the security of the said Brandon:

It is therefore decreed and ordered, that so much of the personal property, slaves, and real estate mentioned in said deed of trust, as may be necessary for that purpose, be sold to satisfy the aforesaid debts, respectively. That said property be sold at the dwelling house of said defendant, Brandon, by public auction to the highest bidder, on a credit of six months for the personal property, nine months for the slaves, and one and two years for the land, the purchaser giving bond or note with good security for the payment of the purchase money, payable to the said creditors herein mentioned, respectively, unless any one or more of said creditors should become purchasers for a sum or sums not exceeding the amount of their respective demands. The bonds or notes to have the force of replevin bonds, and to bear interest from the date.

That Thomas B. Woodyard be, and he is hereby appointed, a commissioner to carry this decree into effect; who is to advertise the time and place of said sale by printed advertisements at the court house door in the town of Cynthiana, Harrison county, and at the door of Boyd's tavern, and at the door of Webster's tavern, in said town; and also at some public place in the town of Leesburgh, Harrison county, and at other public places in Harrison county, at least 20 days before the day of sale. That said commissioner be allowed the sum of $30 for his services. That, in making said sale, said commissioner shall make sale of so much only of said estate, real, personal, or mixed, as may be sufficient to pay the debts, interest, and costs herein decreed. And it is further decreed and ordered, that as to the sum of $1,000, mentioned in the complainants' bill, which will be due by the defendant, Brandon, to the complainant, John L. Shawhan, on the 25th of December, 1842;

and also, as to the sum of $842, mentioned in the complainants' bill, which will be due by the defendant, Brandon, to the complainant, John L. Shawhan, on the 1st day of March, 1843; and also, as to the sum of $425 81 cents, mentioned in the complainant's bill, which will be due by the defendant, Brandon, to the defendant, John O. Hodges, on the 1st day of March, 1843; and as to any balance which may be found in favor of the complainant, John L. Shawhan, on a settlement of said partnership accounts, a lien is hereby reserved on all that portion of the property mentioned in the aforesaid deed of trust, and which shall not be sold by said commissioner under this decree; and as to said demands this cause is retained in court. And the said Thos. B. Woodyard is hereby appointed a commissioner to settle the partnership accounts between the complainant, John L. Shawhan, and the defendant, Brandon; said commissioner is to receive and hear all legal evidence produced by either party, and report the same, with his other proceedings, to this court; and the question of costs is reserved until the final hearing of the cause.

May 16th, 1843. *8th day of term.*

Thomas B. Woodyard returned his report as commissioner, which is ordered to be filed.

May 27th, 1843. *18th day of term.*

The following decree was filed on the 27th day of May, 1843, and by consent of parties, the same is to be considered as recorded; and is in all respects to operate as if recorded.

Decree.

The commissioner appointed by a former decree of this court to sell the property mentioned in the complainant's bill, and to settle the partnership accounts between the complainant, John L. Shawhan, and the defendant, Brandon, made his report herein, from which it appears that he had exposed to sale the personal estate and slaves mentioned in the complainant's bill for an amount which appears on the face of said report, but which was insufficient to satisfy the demands mentioned in said former decree; and it appearing from a supplemental report made by said commissioner that he had settled the partnership accounts between the parties, from which it appears that the complainant, John L. Shawhan, had paid the debts of said partnership to the amount of $3,124 58 cents, and that there yet remains unpaid of said partnership debts $746 53 cents; and it not appearing that the defendant, Brandon, had paid any part of said debts, this court is of the opinion that the complainant, John L. Shawhan, ought to recover of the defendant, Brandon, one-half of the said sum of $3,124 58 cents, being the sum of $1,562 29 cents; and it appearing that the defendant, Brandon, stands indebted to the complainant, John L. Shawhan, in the sum of $1,000 by note, which fell due the 25th of December, 1842; and also in the sum of $842 by note, which fell due the 1st day of March, 1843; and it also

appearing that the defendant, Brandon, stands indebted to the defendant, John O. Hodges, in the sum of $425 81 cts. by note, which fell due the 1st day of March, 1843, and in which said John L. Shawhan and John Douglass stand bound as Brandon's securities. And it further appearing, from said supplemental report, that said partnership accounts were paid by said John L. Shawhan at different times, it is also the opinion of the court, that the said Shawhan ought to recover interest on the one-half the amount of each payment, from the time that such payments were respectively made, whenever the time of such payment appears; and that said Brandon ought to pay one-half of the amount of said partnership debts which yet remains unpaid. It is therefore now decreed and ordered, that so much of the land, comprised in said deed of trust mentioned in the complainant's bill, as may be necessary for that purpose, be sold to satisfy the balance of the demands and debts mentioned in the former decree; and also to satisfy the said debts herein mentioned, which are due from the said Benjamin Brandon to the complainant, John L. Shawhan, and to the defendant, John O. Hodges, with all the interest thereon; and if there should be any of said land remaining unsold after the above mentioned demands are all satisfied, it is the opinion of the court, that so much of the balance of said land as may be necessary for that purpose should be sold to raise ½ of said partnership debts which so remains unpaid.

Thomas B. Woodyard, the former commissioner, is hereby directed to carry this decree into effect, who is to advertise the time and place of said sale as directed in the former decree, and is to sell said land in the manner and on the terms mentioned in said former decree, and is to be governed by the directions of said decree in carrying this decree into effect; but if any part of said land should be sold to satisfy said Brandon's portion of said partnership debts which yet remains unpaid, the bonds or notes for the purchase money are to be taken payable to said commissioner, for the use of said creditors of said firm, whose debts remain unpaid; said commissioner is to hear evidence of the payment of any other of the said partnership debts which may be offered by either party, and make a report of his proceedings to the court; and the question of the costs is reserved until the final hearing of this cause. The commissioner is permitted to withdraw his report and supplement filed herein, to enable him to perform this decree.

May 19, 1843. *11th day of term.*

The commissioner, Thomas B. Woodyard, returned his supplemental report, which is ordered to be filed.

May 26, 1843. *17th day of term.*

This cause this day came on to be heard upon the bills, answers, &c., and because the court will advise thereon, took time, &c.

August 17*th*, 1843. *4th day special term.*

On motion of the defendant a rule is awarded him against the Hon. John Trimble, returnable to the 5th day of the present term, to show cause why he refuses to file with the papers the commissioner's report.

and also, as to the sum of $842, mentioned in the complainants' bill, which will be due by the defendant, Brandon, to the complainant, John L. Shawhan, on the 1st day of March, 1843; and also, as to the sum of $425 81 cents, mentioned in the complainant's bill, which will be due by the defendant, Brandon, to the defendant, John O. Hodges, on the 1st day of March, 1843; and as to any balance which may be found in favor of the complainant, John L. Shawhan, on a settlement of said partnership accounts, a lien is hereby reserved on all that portion of the property mentioned in the aforesaid deed of trust, and which shall not be sold by said commissioner under this decree; and as to said demands this cause is retained in court. And the said Thos. B. Woodyard is hereby appointed a commissioner to settle the partnership accounts between the complainant, John L. Shawhan, and the defendant, Brandon; said commissioner is to receive and hear all legal evidence produced by either party, and report the same, with his other proceedings, to this court; and the question of costs is reserved until the final hearing of the cause.

May 16*th*, 1843. 8*th day of term*.

Thomas B. Woodyard returned his report as commissioner, which is ordered to be filed.

May 27*th*, 1843. 18*th day of term*

The following decree was filed on the 27th day of May, 1843, and by consent of parties, the same is to be considered as recorded; and is in all respects to operate as if recorded.

Decree.

The commissioner appointed by a former decree of this court to sell the property mentioned in the complainant's bill, and to settle the partnership accounts between the complainant, John L. Shawhan, and the defendant, Brandon, made his report herein, from which it appears that he had exposed to sale the personal estate and slaves mentioned in the complainant's bill for an amount which appears on the face of said report, but which was insufficient to satisfy the demands mentioned in said former decree; and it appearing from a supplemental report made by said commissioner that he had settled the partnership accounts between the parties, from which it appears that the complainant, John L. Shawhan, had paid the debts of said partnership to the amount of $3,124 58 cents, and that there yet remains unpaid of said partnership debts $746 53 cents; and it not appearing that the defendant, Brandon, had paid any part of said debts, this court is of the opinion that the complainant, John L. Shawhan, ought to recover of the defendant, Brandon, one-half of the said sum of $3,124 58 cents, being the sum of $1,562 29 cents; and it appearing that the defendant, Brandon, stands indebted to the complainant, John L. Shawhan, in the sum of $1,000 by note, which fell due the 25th of December, 1842; and also in the sum of $842 by note, which fell due the 1st day of March, 1843; and it also

appearing that the defendant, Brandon, stands indebted to the defendant, John O. Hodges, in the sum of $425 81 cts. by note, which fell due the 1st day of March, 1843, and in which said John L. Shawhan and John Douglass stand bound as Brandon's securities. And it further appearing, from said supplemental report, that said partnership accounts were paid by said John L. Shawhan at different times, it is also the opinion of the court, that the said Shawhan ought to recover interest on the one-half the amount of each payment, from the time that such payments were respectively made, whenever the time of such payment appears; and that said Brandon ought to pay one-half of the amount of said partnership debts which yet remains unpaid. It is therefore now decreed and ordered, that so much of the land, comprised in said deed of trust mentioned in the complainant's bill, as may be necessary for that purpose, be sold to satisfy the balance of the demands and debts mentioned in the former decree; and also to satisfy the said debts herein mentioned, which are due from the said Benjamin Brandon to the complainant, John L. Shawhan, and to the defendant, John O. Hodges, with all the interest thereon; and if there should be any of said land remaining unsold after the above mentioned demands are all satisfied, it is the opinion of the court, that so much of the balance of said land as may be necessary for that purpose should be sold to raise ½ of said partnership debts which so remains unpaid.

Thomas B. Woodyard, the former commissioner, is hereby directed to carry this decree into effect, who is to advertise the time and place of said sale as directed in the former decree, and is to sell said land in the manner and on the terms mentioned in said former decree, and is to be governed by the direction of said decree in carrying this decree into effect; but if any part of said land should be sold to satisfy said Brandon's portion of said partnership debts which yet remains unpaid, the bonds or notes for the purchase money are to be taken payable to said commissioner, for the use of said creditors of said firm, whose debts remain unpaid; said commissioner is to hear evidence of the payment of any other of the said partnership debts which may be offered by either party, and make a report of his proceedings to the court; and the question of the costs is reserved until the final hearing of this cause. The commissioner is permitted to withdraw his report and supplement filed herein, to enable him to perform this decree.

May 19, 1843. 11*th day of term.*

The commissioner, Thomas B. Woodyard, returned his supplemental report, which is ordered to be filed.

May 26, 1843. 17*th day of term.*

This cause this day came on to be heard upon the bills, answers, &c., and because the court will advise thereon, took time, &c.

August 17*th*, 1843. 4*th day special term.*

On motion of the defendant a rule is awarded him against the Hon. John Trimble, returnable to the 5th day of the present term, to show cause why he refuses to file with the papers the commissioner's report.

Upon a copy of which the sheriff made the following return: "Executed 17th August, 1843.

F. E. PECK, *D. S.*
For F. COLLINS, *S. B. C.*

Same day. 4th day special term.

Ordered that the rule awarded herein, this day, on the Hon. John Trimble, requiring him to file the commissioner's report in this case be discharged; and on motion of the defendants a rule is awarded them on Thos. B. Woodyard, esq., returnable to the 25th day of the present month, to file with the papers the commissioner's report made by him in this cause.

November term, 1843. *December 1st*, 1843. *17th day of term.*

Ordered that this cause stand continued until the next term.

The affidavit of James R. Curry, taken at his law office, in the town of Cynthiana, on Thursday, the 16th day of June, 1842, between the hours of 6 and 10 o'clock, A. M., to be read as evidence on the trial of a motion by William A. Withers and Benjamin Brandon, to dissolve an injunction granted on a bill in chancery, filed in the Harrison circuit court, in which John L. Shawhan and others, are complainants, and said Withers and Brandon are defendants, who, being of lawful age, states:

That, on the evening of the day on which the deed of trust bears date, Withers informed this affiant, that Brandon intended to convey his estate to him in trust for the benefit of his creditors, and gave the outlines of the provisions of the deed, and requested this affiant to draw it; whilst this affiant was drawing it, the rough draft of the deed, the complainant, John L. Shawhan, came to the window of his office, and asked him if he was doing any private business, and whether he could come in; and this affiant asked him into the office, and he came in, and conversed some time on the subject of the deed of trust, and this affiant then explained to him how he had been directed to draw the deed. This affiant went on to draw the deed of trust, and, about the time it was finished, or soon after, William A. Withers, Thomas B. Woodyard, Benjamin Brandon, Cincinnatus Brandon, William Snodgrass, and the complainant, John L. Shawhan, were all in the office, and continued in and about the office until a second deed was drawn and executed, but some of the company were occasionally passing out and in, and this affiant was busy drawing the deed, and did not notice who were in the house at any one time; he thinks Withers and Woodyard came first, and not long after their arrival, Woodyard leaned his head on the table where this affiant was writing, and went to sleep, and thinks he continued asleep until the second deed was drawn; when the deed was read to Brandon, he objected to the deed, because his other creditors were preferred to Mozee and Nesbitt, and stated that he did not want any preferences to be made among his creditors; the deed, which is of record, was then drawn, and whilst this affiant was writing that deed, the complainant, John L. Shawhan, sat a considerable por-

tion of the time near this affiant, by the stove, during which time Cin. Brandon and William Snodgrass were in the back part of the office, sitting by or on a low writing desk; Brandon and Withers were there also, but he cannot say who were absent from the office at any one time; there was frequent passing out and into the office during the time the deed was drawing; so soon as the deed was drawn and read, it was signed and acknowledged by Brandon, and the company then left; and after they were gone, the complainant then made some further inquiries of this affiant in relation to the deed, and stated that he had come to town intending to get an attachment against Brandon's estate; that he was not fearful of Brandon's intentions, if let alone, but he was fearful that other creditors, either by attachment against his property, or by importunity, might obtain improper preferences, but that he was then satisfied; we then left the office, and overtook Withers, the two Brandons, and Snodgrass, between the court house and east side of the street; they seemed to be waiting, and this affiant thinks they were still in the court yard, about the gate, in front of the court house; the company went towards Withers, and this affiant went home; but it occurred to this affiant that Withers and Brandon might not think that a surrender of the trust estate to Withers necessary, under the deed, especially as a sale was contemplated at an early period, and he returned to give them some information on that subject, and found Withers, Brandon, his son, John L. Shawhan, and Snodgrass, at Withers' door, and they seemed to be about leaving. This affiant remained a few minutes, to inform Withers and Brandon that a change of the possession of the trust estate was necessary, and left.

Question by defendants. State your recollection of the time in the evening when the drawing of the deed was completed, and you left the office.

Answer. I cannot now be definite, but when my attention was first called to the time, my impression was that it was about 10 o'clock; that while I was at home, and before I went to Withers to give them information as to the necessity of his taking possession, the clock struck, and my belief is that it was either 10 or 11 o'clock.

Question by same. Had or not the deed been acknowledged previously to that time?

Answer. The deed had been acknowledged in this office before that time; the company had broke up; Withers, Brandon and others went to Withers' house, as I have before stated; I went home, thought of the necessity of a change of possession, and then went to Withers', to inform him of it; and while I was at home, and before I went to Withers', the clock struck either 10 or 11.

Question by complainant's counsel. You have said that the complainant, John L. Shawhan, came to the window of your office, while you were drawing the rough draft of the deed of trust, and that Shawhan asked you if you were doing any private business; state what time in the evening it was that Shawhan first came to your office that evening, and whether it was before dark or after dark?

Answer. I am unable to state positively, but think it was before dark; after I drew the rough draft of the deed, I went home to supper, and we generally sup before candle-light; and I think it was just before dark when the complainant was first at the office; if it was not, it was very soon after.

By same. Was there any person in your office except yourself when John L. Shawhan first came to your office on that evening?

Answer. No person that I now remember; I think Withers had just left the office.

By same. When you went home to supper, did Shawhan leave your office, or did he remain there?

Answer. I think he only remained in the office a short time, and left before I went to supper; I do not remember distinctly, but think I locked the office before I went to supper; I was in the general habit of doing so.

By same. Did you return to your office immediately after supper; and was there any person at the office when you returned?

Answer. I did return in a short time, and do not now remember that there was any person in the office on my return, but have no distinct recollection whether there was or not.

By same. After you returned from supper, when and where did you first see John L. Shawhan?

Answer. I have no distinct recollection where I first saw him, after I came from supper; I do not now remember to have noticed him afterwards, until I saw him in my office.

By same. Who came to your office first, after you returned from supper?

Answer. I do not now remember; it is my impression that Withers and Woodyard came there first, and soon after, Brandon, his son, Snodgrass, and Shawhan; but which came first I cannot say, nor did I notice which came in first.

By same. Was Shawhan in your office, on that evening, from the time that he first left there until after Withers and Woodyard came there?

Answer. I am unable to say; I think Shawhan left my office in a short time after he came in the first time, and did not again return until about the time Brandon came, and individuals of the company were then passing in and out until the deed was drawn and acknowledged; and I do not remember to have particularly noticed Shawhan, only when he was talking to me, except the time he sat by the stove whilst I was drawing the deed; I was busy writing, and the company seemed to be passing in and out, and occasionally conversing.

By same. Had you any conversation with Shawhan on that evening, after he first left your office?

Answer. I had a conversation with him after the deed was made, in which he expressed himself satisfied with the deed.

By same. Did that conversation take place in your office, or after you had left the office?

Answer. I think in my office, and at my table; I had several conversations with Mr. Shawhan on the subject, but think I am not mistaken in saying that he expressed his satisfaction with the provisions of the deed, in my office, after the deed was executed, and before I left.

By same. Were the conversations which you had with Shawhan, at your table, after Withers and Woodyard came there, or before?

Ans. I think after they had left.

By same. Did Shawhan and yourself remain in your office, after Withers and Woodyard left it?

Ans. I have already stated that we were there after they left.

By same. Did any person remain in your office, with yourself and Shawhan, after Withers and Woodyard left it?

Ans. I do not remember; we were there but a short time.

By same. Did Withers, Woodyard, Benjamin Brandon, Cincinnatus Brandon and William Snodgrass, leave your office at the same time, or at different times?

Ans. The company left about the same time; all may have left together, and Shawhan may have returned; I do not remember how or in what order they left, but all left the office together, or within a very short time.

Adjourned until to-morrow morning, 6 o'clock, A. M.

SAMUEL WILLIAMS, *J. P.*

Friday morning, June 17, 1842.

Met according to adjournment.

Ques. by compl'ts counsel. Were you in your office, when Withers and Woodyard came there, on the night that a deed of trust was acknowledged?

Ans. I think I was either in the office, or came in soon after. I was out of the office but a few minutes at a time, except when I went to supper.

By same. Was it before or after the usual or common bed time, that Withers and Woodyard came to your office on that night?

Ans. I think it was before the common bed time; but at what particular time in the evening I do not remember; my impression is, that it was not long after dark.

By same. Did you write two deeds of trust on that night?

Ans. I wrote two deeds of trust, and after night; the other may have been commenced before dark, but was written in part, and may have been entirely written after dark. I do not distinctly remember whether I wrote any part of the first deed before candle-light.

By same. Was any part of the first deed of trust written after Withers and Woodyard came to your office on that night?

Ans. I do not remember whether it was or not.

By same. How long was it from the time that Withers and Woodyard came to your office on that night, until the deed of trust was acknowledged?

Ans. I am unable to say, nor can I infer the length of time, except

from what was done about the time the first deed was drawn. Either a little before or after, I think Woodyard and Withers came to the office, and some short time after the balance of the persons there that night came in, and when the first deed was read to Brandon, he objected to the deed because Mozee, Nesbitt, were not put on a footing with his other creditors, and then the second deed was drawn like the first, with the exception that they were not excluded from any interest by the provisions of the deed; and having the form before me, I drew the deed as fast as I usually wrote; and you can as well judge how long it would take an ordinarily expert pensman to draw the deed, as I can. I do not think I was more than from a half to 3 quarters of an hour drawing the second deed; my attention was more directed to what I was doing, than to the length of the time occupied in drawing the deed.

By same. Did John L. Shawhan converse with any person in your office on that night, while you were drawing the first or the second deed of trust?

Ans. I paid but little attention to the conversation in the office; there was I think considerable conversation going on in the office, but I do not remember who took part in it, nor do I know that even then I noticed who was taking part in the conversation.

By same. Was John L. Shawhan sitting down or standing up, when you saw him in your office on the night that the deed of trust was drawn?

Ans. I remember to have noticed John L. Shawhan particularly but at one time, and that was when he was sitting by the stove, but my impression is, that he, like the balance of the company, was sometimes moving about, and sometimes sitting; there were not then chairs enough in the office for them all to sit on; there were more persons than chairs.

By same. Did John L. Shawhan come to your office by himself that night, while you were writing the deed of trust, or did he come there with any person?

Ans. The first time he came by himself; the second time he came, I do not remember whether he came alone or in company; there were three or four came in about the same time, but whether all in company, or in succession, I do not remember.

By the same. Was John L. Shawhan in your office when Withers and Woodyard came there, on the night the deed of trust was drawn, or did he come there afterwards?

Ans. I have already answered that question.

By same. Who employed you to write the deed of trust?

Ans. I was spoken to first by Withers, as I have before stated.

By same. Are you the counsel of the defendants in this cause; and did you or not draw their answer?

Ans. I was the def'ts' counsel, or one of the counsel for the defendants in this cause, and drew their answer, but abandoned the case when informed that my affidavit would be taken, and am not counsel in this cause for any of the parties to the suit.

Question by defendants' counsel. You have spoken of a rough draft of a deed of trust, and also of the deed; please explain the circumstances connected with those two instruments, and the differences, if any.

Ans. There was first a rough draft of the terms and conditions of the deed, then a deed drawn, by the terms of which Mozee & Nesbit were excluded from any benefit in, or interest under, said deed.

Adjourned until to-morrow morning, at 6 o'clock, A. M.

SAMUEL WILLIAMS, *J. P.*

Saturday morning, June 18th, 1842.

Met according to adjournment, and continued the affidavit of James R. Curry.

Question by complainant's counsel. Which end of your office did your writing table stand on the night on which the deed of trust was drawn and executed?

Ans. My office stands on the public square, in the town of Cynthiana, in Harrison county, at the south end of the county court clerk's office, and has two windows in front and one in the near or west side of said office, each containing 12 lights of 10 by 12 glass, and at the time I drew the deed my table was standing in the N. E. corner of the office, at the north window, in front of the office; and, whilst I was drawing the deed, the complainant a part of the time sat near me, by the stove.

By same. Did your table stand close by the wall of your office while you were writing the deed of trust?

Ans. It did, and immediately opposite to the window, the lower part of which was nearly upon a level with the top of the table.

By same. What is the size of your office?

Ans. My office is 18 feet long and 16 feet wide.

J. R. CURRY.

HARRISON COUNTY, *sct:*

The foregoing affidavit of Cincinnatus Brandon, William Snodgrass, J. R. Curry, and Pleasant Lilly, was taken, beginning on Monday, the 13th inst., *an* closed this 22d day, Sunday excepted, of said inst.

Subscribed and sworn to by the Cincinnatus Brandon, Wm. Snodgrass, J. R. Curry, and Pleasant Lilly, before the undersigned, a justice of the peace for said county, at the time and place, and for the purpose stated in the caption thereof.

Given under my hand this 22d day of June, 1842.

SAMUEL WILLIAMS, *J. P.*

The following is the caption attached to the affidavit of Cincinnatus Brandon, filed in this cause, and referred to in the certificate of Samuel Williams, above.

The affidavit of Cincinnatus Brandon, taken at the law office of James R. Curry, in the town of Cynthiana, Harrison county, on Monday, the 13th day of June, 1842, between the hours of 6 and 10 o'clock, A. M., to be read as evidence for the defendants, Withers and

Brandon, on a motion by them to dissolve an injunction now depending in the Harrison circuit court, which was granted on a bill in chancery filed in said court, in which John L. Shawhan and others are complainants, and William A. Withers and Benjamin Brandon are defendants.

Fee—Transcript, $17 50.

BOURBON CIRCUIT, *sct:*

I, J. M. Arnold, clerk of the court for the circuit aforesaid, do hereby certify, that the foregoing seventy pages, of which this constitutes one, do contain a full, true, and complete transcript of the record and proceedings had and taken in a certain suit in chancery depending in said court, between the parties therein named, as fully as the same remains of record in my office, with exceptions of the commissioner's reports, the depositions and affidavits, which were omitted by the direction of counsel. The affidavit of James R. Curry being copied by the order of counsel.

In witness whereof, I have hereunto set my hand, this 19th day of March, 1844.

J. M. ARNOLD.

And afterwards, on the 20th day of December, 1843, the parties, by their counsel, made and filed the following agreement, viz:

Cates and Lindsey, as attorneys for Perry Wherritt, assignee of Benj. Brandon, and Ben. Monroe, attorney for John L. Shawhan, Daniel Shawhan, and Benjamin Berry, agree, that party may take depositions on giving to the opposite party reasonable notice, without a commission, or any interrogatories, filed in court.

19 Dec'r, 1843.

BEN. MONROE,
CATES & LINDSEY.

And afterwards, to wit, at the May term of the court aforesaid, A. D. 1844, and on the 6th day of May, 1844, came the complainant, by his counsel, and also the defendant, Shawhan, by his counsel; and upon the affidavit of complainant filed, his counsel moved the court for a rule upon the defendant, John L. Shawhan, to surrender possession of the land in controversy; and the arguments of counsel being heard, but the court, not being advised, took time, &c.

The following is the affidavit above referred to, to wit:

Perry Wherrit maketh oath and saith, that, in 1842, on the petition of one John Lail, a creditor of one Benjamin Brandon, then a resident of Harrison county and district of Kentucky, and regular proceedings had therein in the district court of the United States for the Kentucky district, sitting in bankruptcy, said Brandon, on the 22d Nov'r, 1842, was regularly decreed a bankrupt by said court, and this affiant was appointed assignee of said bankrupt; that shortly afterwards this affiant obtained possession from said bankrupt of a tract of land in Harrison county, in the district aforesaid, then in said bankrupt's possession, and

surrendered by him to affiant as part of said bankrupt's estate; that affiant, after obtaining possession of said lands, rented the same to tenants, and put them in possession, who cultivated the improved lands, and continued so to cultivate them until about the first day of May, inst; that the affiant, after obtaining possession of said land, understanding that one John L. Shawhan, of said county of Harrison, had, or pretended to have, some claim on said lands, brought his suit in the district court of the United States for the Kentucky district aforesaid, *for the Kentucky district aforesaid*, against said John L. Shawhan, to settle and quiet the affiant's title to said lands; that he might make sale thereof, for the best possible price, for the benefit of said Brandon's creditors, a suit was brought on the 10th of August, 1843, process thereon awarded immediately, and served on said John L. Shawhan on the 1st of December, 1843, and his answer was filed in said suit at the December rules, 1843, said suit still pending and undetermined in said court. The affiant further states, that said John L. Shawhan had actual, as well as constructive, legal notice of the decree in bankruptcy aforesaid against said Brandon, knew that affiant was appointed assignee, and had possession of said lands, and had notice of the injunction awarded by the district court in said bankrupt case of Brandon against all persons, enjoining them from interfering with the property of said Brandon; that, notwithstanding all these facts, the affiant states, that said John L. Shawhan, about the 1st of May, inst., under some decree or order of the Bourbon circuit court, obtained since the decree of bankruptcy aforesaid, and since the appointment of affiant as *assinee* aforesaid, and since he obtained possession as aforesaid, has procured the sheriff of Harrison county to dispossess and amove the tenants of this affiant. This affiant, being no party to any proceeding of any kind had by said Shawhan against Brandon, or any other person, in said circuit court of Bourbon, or elsewhere, except in the district *cour* of the United States for the Kentucky district.

This affiant states farther, that his tenants had made large preparations for raising crops on said lands, and had planted a portion, if not all, thereof; that said Shawhan disregarding their rights, as well as the rights of affiant, as assignee as aforesaid, as well as the orders and decrees of the district court aforesaid, amoved and dispossessed the tenants of affiant as aforesaid. The affiant further states, that there are about 200 acres of tillable land on said farm in cultivation. That said farm constituted the whole estate of said Brandon that has come to the possession of said affiant; that said Shawhan knew the fact that the affiant had rented said place, and made no objection or interference with affiant in his so doing, until shortly after the 1st of May as aforesaid. The affiant prays for such orders, attachments, rules or writs, as may be necessary to restore him and his tenants to the possession of said lands, as the district court may deem equitable and right.

P. WHERRITT, *Assignee*.

FRANKLIN COUNTY, *sct:*

This day personally Perry Wherritt appeared before the undersigned, a justice of the peace for said county of Frankfort, and made oath that the foregoing affidavit was true to the best of his knowledge and belief.

Given under my hand, as a justice of the peace as aforesaid, the 3d day of May, 1844. JAMES SHANNON, *J. P. F. C.*

The following copy of the decree of the Bourbon circuit court, rendered at the April term, 1844, filed in this cause on the 6th day of May, 1844, viz:

Bourbon circuit court, sct: April term, 1844.

JOHN L. SHAWHAN, &c., complainants,
against
BENJ. BRANDON, &c., defendants. } In chancery.

It appearing from the commissioner's report returned herein, that on the 14th of July, 1843, he did expose to sale the tract of land mentioned in the complainant's bill, and that the complainant, John L. Shawhan, became the purchaser thereof, at the price of $6,561 50 cents. It further appears that the balance which said John L. Shawhan is entitled to under the first decree made herein, after deducting the amount of the purchases of the Shawhans at the first sale, of $3,103 99 cents, that there was decreed to said John L. Shawhan, by the second decree made herein, the sum of $3,616 85 cents, amounting in all to $6,720 84; that the land purchased by said John L. Shawhan at the second sale amounted to $6,571 50 cents, leaving a balance of $149 34 cents, which was decreed to the Shawhans above the amount of their purchases. It is therefore decreed and ordered, that the said purchases made by the said Shawhans be and the same are hereby confirmed; that the amount so decreed to said Shawhans be and the same are hereby extinguished and satisfied, by the aforesaid purchases made by them, except as to said balance of $149 34, which was decreed to the Shawhans above the amount of their purchases. That a writ of possession issue in favor of said John L. Shawhan, to put him into the possession of said tract of land mentioned in the complainant's bill; that Thomas B. Woodyard, the commissioner herein, convey all the right and title of the defendants, Brandon and William A. Withers, in and to said tract of land, to said John L. Shawhan, by deed of special warranty, warranting the title of the same against the claims of the said Benjamin Brandon and William A. Withers, and all persons claiming by, through, or under them, but not against the claim or claims of any other person or persons whatever. It is further decreed and ordered, that said commissioner go upon said tract of land, and assess the reasonable and fair rent thereof, from the 6th day of April, 1842, when said deed of trust was made, up to the 22d of October, 1842, when the first sale was made herein; the said commissioner also assess the reasonable and fair rent of said land, from said 22d of October, 1842, to the 1st day of March

last, and make a report thereof to this court; and the cause is continued until the next term.

A copy—att: J. M. ARNOLD, *C. B. C. C.*
By J. H. JOHNSON, *D. C.*

And afterwards, to wit, at the May term of the court aforesaid, and on the 14th day of May, A. D. 1844, "this cause came on to be heard, and was heard in part on bill, answers, depositions and exhibits, and was continued over for further hearing.

And afterwards, to wit, at the same term of the court aforesaid, and on the 18th day of May, 1844, came again the parties by counsel.

On the hearing of this cause, the complainant read the petition and record proceedings of this court in bankruptcy, wherein his assignor, Brandon, was declared a bankrupt, including his bond returned and filed according to this decree, and the same is therefore a part of the record, and a copy thereof may be filed or transcribed for the original.

The deposition of William A. Withers, objected to by defendants on the ground of his interest with complainant, was suppressed. And the cause was fully heard and argued by counsel; but the court not being advised, took time, &c.

And afterwards, to wit, at the June term of the court aforesaid, and on the 3d day of June, 1844, "on the hearing of this cause, the complainant prayed, as specific relief as to the moveable property which was of the said Benjamin Brandon at the time he became a bankrupt, and which defendants afterwards caused to be sold under the decree of the Bourbon circuit [court,] that the defendants be adjudged to pay the amount of said sales.

The aggregate amount of these sales not appearing, the master is ordered to ascertain, by calculations on the copy of the report of sales from the Bourbon circuit court referred to in the bill, and calculate the interest thereon from the day of sale to this time, and shew the total sum.

And afterwards, to wit, at the June term of the court aforesaid, and on the 10th day of June, A. D. 1844, the following order was made herein, to wit:

The master is directed to ascertain and state the several sums to which each of the defendants, now here before this court, was entitled of the amount of the sales of the moveable property made under the decree of the Bourbon circuit court, according to the terms and effects thereof, and shew the interest on each such sum from the day of sale up to the present date. Where one defendant is entitled to two sums or debts separately mentioned in the decree, let them be stated together. Where two of the defendants were jointly entitled to one sum, let them be regarded, as to such sum, as one creditor, and for this purpose let their names be united, and the two considered as one; where a defendant, and another person or persons not a defendant in this suit, was entitled to one sum, state it as if such defendant was himself only entitled to the money, and so bound in solidum therefor to the complainant here.

John L. Shawhan will be taken as the only person entitled to the dividend of the proceeds of the sales on the debt to William Griffith, provided for in the decree on the prayer of him, Shawhan, as the security of Brandon.

And at the same time, and on the same day of the court aforesaid, the master commissioner made his two reports, according to the directions of the court at a former and the present day of the term, which are filed.

Said reports are as follows, to wit:

United States Kentucky D. court.

PERRY WHERRITT, assignee of BEN. BRANDON, against JOHN L. SHAWHAN, &c. } In chancery.

In pursuance of the order of reference in this cause made, I have made a calculation of the amount of the sales of the personal property and slaves, under a decree of the Bourbon circuit court, as shewn by the report of the commissioner appointed to make the sale; a copy of which report is filed in the case. I find the gross amount of sales to be - - - - - - - - $2,450 73

Interest on this sum from the 24th November, 1842, (date of sale) to this date, viz: 24th June, 1844, one year six months and ten days - - - - 224 67

Total - - - $2,675 37

Which is respectfully submitted, June 4, 1845.

JOHN C. HERNDON, *Master in chancery.*

I find the decree for the sale was procured at the instance of these persons, who appear to have been actors in procuring the decree and sale.

Original bill.
- John L. Shawhan - - - - - 1.
- Benjamin Berry - - - - - 2.
- The Bank of Kentucky.
- Isaac Miller - - - - - - 3.
- Daniel Shawhan - - - - - 4.
- Greenup Rennington.
- George H. Perrin - - - - 5.

Amended bill.
- John Shawhan, sr.
- John Lail, William Gray.
- John Douglass.
- Catharine Snodgrass - - - 6.

JOHN C. HERNDON, *Commissioner.*

These are the defendants in this suit, on whose behalf the decree of the Bourbon circuit was rendered, and who were entitled to dividend of the proceeds of the sales of the moveable property on the several debts mentioned and provided for in that decree.

John L. Shawhan - - - - 1 Benjamin Berry - - - - - 2
Isaac Miller - - - - - 3 Daniel Shawhan - - - - - 4
George H. Perrin - - - - 5 Catharine Snodgrass - - - 6

JOHN C. HERNDON,
Commissioner in chancery.

UNITED STATES, *Kentucky district court:*

PERRY WHERRITT, assignee of Benj. Brandon, complt., against JOHN L. SHAWHAN and others, defendants. } In ch'ry.

In pursuance of the order of reference in this cause, directing me to ascertain—

1. The amount which would have been required on the day of sale to satisfy the several debts for the satisfaction of which the sale was ordered by *by* the Bourbon circuit court, in the suit in chancery of John L. Shawhan and others vs. Brandon & Withers.

2. The amount of each of those debts, with the names of the persons bound therefor, and the amount which was payable to each of the debtees.

3. The sum which each of the debtees was entitled to as dividend out of the amount of sales.

I find these amounts were due to these persons on the day of sale, and for the satisfaction of which the sale was ordered and made, viz: (Interest calculated to day of sale.)

To John L. Shawhan - - - - -		$1,000 00
To interest from 25th December, 1841, to 24th November, 1842, 11 months - - - - -		54 83
To same - - - - - -		349 00
To interest from 1st March, 1842, to 24th November, 1842, (8 months 24 days) - - - -		15 36
To same - - - -	$1,372 56	
To interest from 19th July, 1841, to 11th January, 1842 - - -	39 59	
	1,412 15	
To credit 11th January, 1842 - -	74 44	
	1,337 71	
To interest from 11th January to 31st March, 1842 - - - - -	17 84	
	1,355 55	
To credit 31st March, 1842 - -	207 00	
	1,148 55	
To interest from 31st March, 1842, to 24th November, 1842 - - -	44 82	
	1,194 37	2,613 56
To John L. Shawhan, John Lail, and John Shawhan, sr.		$750 00

To interest from 19th June, 1842, to 24th November, 1842, 5 months 5 days - - - -		19 38
		769 38
To John L. Shawhan, John Shawhan, and Daniel Shawhan, sr. - - - - - -		150 00
To interest from 19th April, 1842, to 24th Nov., 1842 -		5 38
		155 38
Amount carried forward - -		3,538 32
Amount brought forward - -		3,538 32
To Daniel Shawhan, (John L. Shawhan being the security of Brandon) - -	$720 00	
Interest from 19th September, 1840, to 24th November, 1842 - - -	94 20	814 20
George H. Perrin - - -	215 18	
Credit by amount paid 30th April, 1841	20 00	
	195 18	
Interest from 30th April, 1841, to 1st December, 1841 - - - -	6 83	
	202 01	
Credit 1st December, 1841 - -	100 00	
	102 01	
Costs suit - -	6 38	108 39
Benjamin Berry, (John L. Shawhan is Brandon's security to Berry) - -	1,377 66	
Interest from 12th May, 1842, to 24th November, 1842, (6 months 12 days) -	43 94	
Costs suit at law -	6 13	1,427 73
William Griffith, (John L. Shawhan is Brandon's security to Griffith) - -	697 00	
Interest from 1st Mar., 1842, to Nov. 24, 1842	30 67	727 67
Catharine Snodgrass, (John L. Shawhan being security for Brandon in this debt) -	749 81	
Interest from 21st May, 1840, to 29th June, 1841, (1 month 8 days) - -	4 75	
	754 56	
Credit 29th June, 1840 - - -	50 00	

	704 56	
Interest from 29th June, 1840, to 24th November, 1842	101 64	
Costs suit at law	6 38	812 58
Isaac Miller, (John L. Shawhan and John Lail, securities of Brandon	848 00	
Interest from 19th August, 1842, to 24th November, 1842, (3 months 5 days)	13 43	
Costs of suit	6 76	867 19
Total amount of debts for which sale was ordered to be made		8,296 08
Amount of sale made to satisfy the above named debts, 24th November, 1842		$2,450 73
This sum being divided pro rata among the debts due to each of the before named creditors, gives to each the sums annexed to their names, being 29½ per centum.		
To John L. Shawhan	772 00	
To John L. Shawhan, John Lail, and John Shawhan, sr.	237 16	
To John L. Shawhan, John Shawhan, sr., and Daniel Shawhan	46 76	
To Daniel Shawhan	240 28	
To George H. Perrin	32 20	
To Benjamin Berry	421 68	
To William Griffith	214 75	
To Catharine Snodgrass	239 77	
To Isaac Miller	256 13	2,450 73
Statement showing the amount due from each of the above named persons, with interest, from 24th November, 1842, (the date of the sale,) up to this date, say 10th June, 1844:		
John L. Shawhan	772 00	
Interest	71 41	843 41
John L. Shawhan, John Lail, and John Shawhan, sr.	227 16	
Interest	21 00	248 16
John L. Shawhan, John Shawhan, sr., and Daniel Shawhan	46 76	
Interest	4 35	51 11
Daniel Shawhan	240 28	

Interest - - - - -	22 20	262 48
George H. Perrin - - -	32 20	
Interest - - - - -	2 96	35 16
Benjamin Berry - - -	421 68	
Interest - - - - -	39 09	460 72
William Griffith - - -	214 75	
Interest - - - - -	19 80	234 55
Catharine Snodgrass - - -	239 77	
Interest - - - - -	22 11	261 88
Isaac Miller - - - -	256 13	
Interest - - - - -	23 68	279 81
Total - - - -		2,677 28

June 10th, 1844. JOHN C. HERNDON,
Commissioner.

The defendants were entitled to the sums annexed to their names, out of the amount made by the sale of the moveable property. The interest on each sum is given, and the aggregate shewn as required by the order of the court.

John L. Shawhan is liable to the complainant for these sums, viz:		
This sum, his proportion of sale - -	$772 00	
This sum, Griffith's proportion of sale -	214 75	
This sum, proportion of sales to which he, John Lail and John Shawhan, sr., were entitled	227 16	
Principal - -	1,213 91	
Interest on the above sum, per statement	112 21	$1,326 12
John L. Shawhan and Daniel Shawhan	46 76	
Interest - - - - -	4 35	51 11
Daniel Shawhan, his proportion of sales	240 28	
Interest on same - - -	22 20	262 48
George H. Perrin, proportion sales -	32 20	
Interest - - - - -	2 96	35 16

Benjamin Berry, proportion sales -	421 68	
Interest - - - - -	39 04	460 72
Catharine Snodgrass, proportion sales -	239 77	
Interest - - - - -	22 11	261 88
Isaac Miller, proportion sales - -	256 13	
Interest - - - - -	23 68	279 81
		2,677 28

June 10, 1844. JOHN C. HERNDON,
Commissioner.

And afterwards, to wit, and on the same day of the court aforesaid, to wit, on the 10th day of June, A. D. 1844, the following decree was entered herein, to wit:

This cause having been heard at this term, and argued by counsel, thereupon, on consideration thereof:

It is adjudged by the court, that the complainant was invested with all the estate which was of said Brandon at the time he became a bankrupt, and that the defendants did not, by their after commenced suit, and proceedings therein had, (with notice of his act of bankruptcy,) obtain a right to have it thereby subjected exclusively, or first, to the satisfaction of their demands; and that the defendants, John L. Shawhan, Dan'l Shawhan, George H. Perrin, Benj. Berry, Catharine Snodgrass, and Isaac Miller, by the subsequent sales of the moveable property by them so caused, did become, on the demand of the complainant here made, and are each of them, liable for his, their, and her proper portion of the proceeds thereof, whereof they thus wrongfully obtained the benefit, and must pay the same, together with the interest thereon, to the complainant, for the purpose of equal distribution required by the statute; and it is adjudged, that the sale of the land so afterwards caused by the defendants was wrongful, and assailed here by the complainant, was and is ineffectual, and did not invest the defendant, John L. Shawhan, the purchaser, with the right thereto, in opposition to the title which had previously passed by decree of bankruptcy of its holder so declared, and was vested in the complainant as the assignee so appointed; but the said Shawhan, by the assertion of his pretended claims so founded, has and does injuriously embarrass the title of the complainant.

It is therefore ordered, adjudged, and decreed, that the defendant, John L. Shawhan, do, on or before the first day of July next, execute to the complainant, as assignee of the bankrupt estate of Benjamin Brandon, a deed of release of all right, title, and interest, claimed by him, Shawhan, in and to the tract of land whereon the said Brandon resided, containing 350 acres, more or less, in the county of Harrison,

Interest - - - - -	22 20	262 48
George H. Perrin - - -	32 20	
Interest - - - - -	2 96	35 16
Benjamin Berry - - -	421 68	
Interest - - - - -	39 09	460 72
William Griffith - - -	214 75	
Interest - - - - -	19 80	234 55
Catharine Snodgrass - - -	239 77	
Interest - - - - -	22 11	261 88
Isaac Miller - - - -	256 13	
Interest - - - - -	23 68	279 81
Total - - - -		2,677 28

June 10th, 1844. JOHN C. HERNDON,
Commissioner.

The defendants were entitled to the sums annexed to their names, out of the amount made by the sale of the moveable property. The interest on each sum is given, and the aggregate shewn as required by the order of the court.

John L. Shawhan is liable to the complainant for these sums, viz:		
This sum, his proportion of sale - -	$772 00	
This sum, Griffith's proportion of sale -	214 75	
This sum, proportion of sales to which he, John Lail and John Shawhan, sr., were entitled	227 16	
Principal - -	1,213 91	
Interest on the above sum, per statement	112 21	$1,326 12
John L. Shawhan and Daniel Shawhan	46 76	
Interest - - - - -	4 35	51 11
Daniel Shawhan, his proportion of sales	240 28	
Interest on same - - -	22 20	262 48
George H. Perrin, proportion sales -	32 20	
Interest - - - - -	2 96	35 16

Benjamin Berry, proportion sales -	421 68	
Interest - - - - -	39 04	460 72
Catharine Snodgrass, proportion sales -	239 77	
Interest - - - - -	22 11	261 88
Isaac Miller, proportion sales - -	256 13	
Interest - - - - -	23 68	279 81
		2,677 28

June 10, 1844. JOHN C. HERNDON,
Commissioner.

And afterwards, to wit, and on the same day of the court aforesaid, to wit, on the 10th day of June, A. D. 1844, the following decree was entered herein, to wit:

This cause having been heard at this term, and argued by counsel, thereupon, on consideration thereof:

It is adjudged by the court, that the complainant was invested with all the estate which was of said Brandon at the time he became a bankrupt, and that the defendants did not, by their after commenced suit, and proceedings therein had, (with notice of his act of bankruptcy,) obtain a right to have it thereby subjected exclusively, or first, to the satisfaction of their demands; and that the defendants, John L. Shawhan, Dan'l Shawhan, George H. Perrin, Benj. Berry, Catharine Snodgrass, and Isaac Miller, by the subsequent sales of the moveable property by them so caused, did become, on the demand of the complainant here made, and are each of them, liable for his, their, and her proper portion of the proceeds thereof, whereof they thus wrongfully obtained the benefit, and must pay the same, together with the interest thereon, to the complainant, for the purpose of equal distribution required by the statute; and it is adjudged, that the sale of the land so afterwards caused by the defendants was wrongful, and assailed here by the complainant, was and is ineffectual, and did not invest the defendant, John L. Shawhan, the purchaser, with the right thereto, in opposition to the title which had previously passed by decree of bankruptcy of its holder so declared, and was vested in the complainant as the assignee so appointed; but the said Shawhan, by the assertion of his pretended claims so founded, has and does injuriously embarrass the title of the complainant.

It is therefore ordered, adjudged, and decreed, that the defendant, John L. Shawhan, do, on or before the first day of July next, execute to the complainant, as assignee of the bankrupt estate of Benjamin Brandon, a deed of release of all right, title, and interest, claimed by him, Shawhan, in and to the tract of land whereon the said Brandon resided, containing 350 acres, more or less, in the county of Harrison,

in the bill and answers mentioned, with covenant of warranty against all persons claiming, by, through, or under him.

And it is adjudged and ordered, that said Shawhan do, on or before the said first day of July next, deliver to the complainant the possession of the said land. And the sums of money for which each of the defendants is liable, on account of their said sales of the moveable property of the property of the bankrupt estate, and how the complainant is entitled to recover the same of them respectively, having been ascertained by the master, and shewn in his report, according to the directions of the court:

It is accordingly adjudged and decreed, that the defendant, John L. Shawhan, pay to the complainant the sum of $1,326 12, with interest on $1,213 91 cents, the part thereof which is principal, at the rate of 6 per centum per annum, from the 10th day of June, 1844, until paid; that the defendants, John L. Shawhan and Daniel Shawhan, pay to the complainant the sum of $51 11, with interest on the sum of $46 76, the part thereof which is principal, at the same rate, and from same date until paid.

That the defendant, Daniel Shawhan, pay to the complainant the sum of $262 48, with interest on $240 28 cents, the part thereof which is principal, from the same, at the same rate, until paid.

That the defendant, George H. Perrin, pay to the complainant the sum of $35 16 cents, with interest on $32 20, the part thereof which is principal, from the same date, at the same rate, until paid.

That Benjamin Berry pay to the complainant the sum of $460 72, with interest on the sum of $421 68, the part thereof which is principal, from the date, and at the same rate, until paid.

That the defendant, Catharine Snodgrass, pay to the complainant, the sum of $261 88, with interest on the sum of $239 77, the part thereof which is principal, from the same date, and at the same rate until paid.

And that the defendant, Isaac Miller, pay to the complainant $279 81, with interest on $256 13, the part thereof which is principal, from the same date, and at the same rate, until paid.

The said assignment and conveyance of the said Brandon to the defendant, William A. Withers, is annulled.

It is considered that Greenup Rennington, John O. Hodges, John Williams, and the President, Directors & Company of the Bank of Kentucky, (as well as Benjamin Brandon,) were unnecessary parties, and they are dismissed.

It is further ordered and decreed, that the said John L. Shawhan, Daniel Shawhan, sen'r, George H. Perrin, Benjamin Berry, Catharine Snodgrass, and Isaac Miller, pay to the complainant his costs in the prosecution of this suit expended. And

Thereupon, the defendants prayed an appeal to the honorable the circuit court of the United States, held in and for the eighth circuit and district of Kentucky, which is granted them upon their executing bond, payable to the complainant, in the sum of $6000, with John Shawhan,

sen'r., C. Redmon, Joseph Shawhan, and William Patton, their securities, conditioned according to law.

Know all men by these presents, that we, John L. Shawhan, Dan'l Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, Isaac Miller, an John Shawhan, sr., C. Redmon, Joseph Shawhan, and William Patton, by Ben. Munroe, their attorney in fact, are held and firmly bound unto Perry Wherritt, assignee of the bankrupt estate of Benjamin Brandon, in the sum of $6000 00; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 11th day of June, 1844. The condition of the above obligation is however such, that whereas the above bound John L. Shawhan, Dan'l Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, and Isaac Miller, have prayed for and obtained an appeal from a decree of the district court of the United States, held in and for the Kentucky district, pronounced on the 11th day of June, 1844, in a certain suit in chancery, wherein the said Perry Wherritt, as assignee of the bankrupt estate of Benjamin Brandon, was complainant, and the said John L. Shawhan, Daniel Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, and Isaac Miller, and others, were defendants.

Now, if the above bound John L. Shawhan, Dan'l Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, and Isaac Miller, shall well and truly prosecute said appeal with effect, or, on failure thereof, pay to the said Perry Wherritt, as assignee as aforesaid, all damages and costs that may be awarded against them, the said John L. Shawhan, and Daniel Shawhan, Perrin, Berry, Snodgrass, and Miller, then the above obligation to be void, otherwise to remain in full force and virtue.

JOHN L. SHAWHAN, [L. S.]
By B. MONROE, *his att'y in fact.*
JOHN SHAWHAN, SR., [L. S.]
By B. MONROE, *his att'y in fact.*
C. REDMON, [SEAL.]
By B. MONROE, *his att'y in fact.*
JOSEPH SHAWHAN, [SEAL.]
By B. MONROE, *his att'y in fact.*
WM. PATTON, [SEAL.]
By B. MONROE, *his att'y in fact.*

The following are the proceedings in bankruptcy, referred to in the decree, and thereby made a part of the record in this case, to wit:

United States Kentucky district court, in bankruptcy.

October 5, 1842.

JOHN LAIL, of Harrison county,
vs.
BENJAMIN BRANDON, merchant, of Harrison county. } 1284.

The petition of John Lail, of Harrison county, as a creditor of the

defendant, praying that he, the said Benjamin Brandon, may be declared a bankrupt, filed, and the adjudication set for Friday, the 4th day of November next; and the defendant, and all others, enjoined from removing or otherwise disposing of the property now of the defendant, or which on the decree the assignee may be entitled to reclaim and recover, or of any of the evidence thereof, so as to defeat or embarrass his remedies.

JOHN O. HODGES,
Commissioner.

To the district court of the United States, for the Kentucky district, in bankruptcy:

John Lail, of Harrison county, in the State of Kentucky, represents, that Benjamin Brandon, a resident of Harrison county, and district of Kentucky, is indebted to your petitioner in the sum of $500 and upwards; and being a merchant, and using the trade of merchandize, and being a retailer of merchandize, and owing debts to the amount of not less than $2,000, did, on or about the 6th day of April, 1842, since the 1st day of February, 1842, make a fraudulent conveyance of his lands and tenements, goods and chattels, with *interest* to defraud his creditors; and did also, on or about the 6th day of April, 1842, since the 1st day of February, 1842, conceal himself to avoid being arrested, with intent to defraud his creditors, and thereby became a bankrupt; hereof the petitioner offers due proof, and prays that on proceedings had this court declare that the said Benjamin Brandon is a bankrupt; and that thereupon such further proceedings may be had as the case may require.

Cynthiana, 24th September, 1843.

JOHN LAIL.

I do verily believe the statements in the above petition are true in substance and in fact. JOHN LAIL.

COMMONWEALTH OF KENTUCKY,
Harrison county, sct:

This day appeared before me, a justice of the peace of said commonwealth for said county, the above John Lail, petitioner, personally known to me, and on solemn oath made and subscribed the above affidavit.

Given under my hand, at the county aforesaid, this 24th day of September, 1842.

H. COFFMAN, *J. P.*

Upon a true copy of the foregoing petition and injunction, the following return was made, to wit:

"Executed the within process by delivering a true copy thereof to the within named Benjamin Brandon; also delivered a true copy to M. D. Moore, deputy sheriff of Harrison county, this 7th day of October, 1842.

K. KINSBROUGH, *Coroner H. C.*

Bond.

We, John Lail and Nathan Stewart, jointly and severally bind our-

selves, our heirs, &c., to pay to Benjamin Brandon the sum of one thousand dollars.

The condition of this obligation is, however, such, that whereas the said John Lail has presented his petition in this United States Kentucky district court, in bankruptcy, praying the said Benjamin Brandon may be declared a bankrupt, which on the execution of this bond is filed.

Now, if the said petition shall be prosecuted with effect, or in case of its dismissal for want of prosecution, on the adjudication or otherwise, if the said John Lail shall pay to the said Benjamin Brandon all the damages and costs which he shall have sustained and incurred by the filing and prosecuting of said petition, then this obligation shall be void; otherwise remain in full force.

Witness our hands and seals, this 5th day of October, 1842.

[SEAL.]
N. STEWART. [SEAL.]

Witness—
S. J. M. MAJOR.

Deed of trust.

This indenture, made and entered into this 6th day of April, 1842, between Benjamin Brandon, of Harrison county, and State of Kentucky, of the one part, and William A. Withers, of the county and State aforesaid, of the other part, witnesseth: that the said Benjamin Brandon, for and in consideration of the sum of one dollar, to him in hand paid, and for the further consideration hereinafter mentioned, hath given, granted, bargained, sold, released, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, release, convey, and confirm, unto the said William A. Withers, and his successor or successors, forever, all the estate, real, personal, and mixed, of whatever nature or kind it may consist, (except such property only as is by law not subject to execution.) Said estate consisting of a tract of about 336 acres of land, situated in the county and State aforesaid, and the same tract on which said Brandon now resides, and on which is a steam mill and distillery; the boundary of which land is more particularly designated in the several deeds which said Brandon holds for said land; also 5 negroes, two wagons and teams, about 400 head of hogs, about 15,000 pieces of cooper's stuff, all his stock of horses, cattle and sheep, his household and kitchen furniture, and farming utensils, his debts and choses in action, of every kind and description; it being the intention of said Brandon, by this deed, to convey to said Withers, and his successors forever, all his estate, real, personal, and mixed, and choses in action, with the exception hereinbefore expressed, whether the same be particularly mentioned and set forth in this instrument or not; to have and to hold all the estate, real, personal, and choses in action, hereby conveyed to the said William A. Withers, and his successor or successors, forever, in trust for the following purposes, namely, to collect the debts and choses in action due, payable, or owing to said Brandon, and to sell the real estate hereby conveyed,

either altogether or in lots, as said trustee may think most advisable, at public auction to the highest bidder, on the following payments, namely, one third of the purchase money to be paid in hand, and the residue in 1 and 2 years; and the slaves and personal estate to be sold at public auction to the highest bidder on a credit of 12 months; and, after making to said trustee a just and reasonable compensation for his trouble and expenses in executing this trust, to pay all the money which he may receive as trustee aforesaid, either by the collection of debts, or choses in *in* action, or from the proceeds of the sale of the trust estate, to all of the creditors of said Brandon, rateably and proportionally to the amount of their respective debts or demands; but should any one or more of the creditors of said Brandon become the purchaser, or purchasers, of any portion of the real or personal estate, or slaves, hereby conveyed, said trustee is authorized and empowered to accept the debt or debts due or owing by said Brandon to such purchaser, or purchasers, in payment of their respective purchases, so far as said debts may go; and in such cases, if any such should occur, only the residue of the price to be distributed pro rata as aforesaid; and, after the payment of all said Brandon's debts, to pay the residue, if any, to said Brandon, his heirs and assigns; and the title to the estate hereby conveyed, he doth hereby warrant and defend to said Withers, and his successor or successors, forever, in trust for the purposes aforesaid, against the claim or claims of him, the said Benjamin Brandon, and against all other claims.

In testimony of which, the said Benjamin Brandon hath hereunto subscribed his name and affixed his seal, this day and year first above written.

BENJAMIN BRANDON. [SEAL.]

STATE OF KENTUCKY, *Harrison county, sct:*

I, Thomas B. Woodyard, clerk of the county court for the county aforesaid, do certify, that this deed of trust, from Benjamin Brandon to William A. Withers, was produced to me in the county aforesaid on the 6th of April, 1842, and the same was acknowledged by the said Brandon to be his hand and seal, act and deed, for the purposes therein contained; and the same is ordered to be recorded, which is accordingly done this 7th day of April, 1842.

THOMAS B. WOODYARD, *Clerk.*

STATE OF KENTUCKY, *Harrison county, sct:*

I, Thomas B. Woodyard, clerk of the county court for the county aforesaid, do certify, that the foregoing contains a true copy of the deed of trust from Benjamin Brandon to William A. Withers, which is now of record in the Harrison county court clerk's office.

Given under my hand this 31st day of October, 1842.

THOMAS B. WOODYARD, *Clerk.*
By O. F. RANKIN, *D. C.*

The deposition of Edward D. McAdams, taken at the office of John O. Hodges, at his office in the southeast corner of the court house, in

the town of Cynthiana, on Monday, the 31st day of October, 1842, to be read as evidence on the trial of a cause now depending in the United States Kentucky district in bankruptcy, in which John Lail is petitioner, and Benjamin Brandon is defendant, in bankruptcy; this deponent being of lawful age and duly sworn, deposeth and saith:

Question by solicitor for petitioner.

Are you acquainted with the defendant, Benjamin Brandon; have you lived with him, and how long? If you have, state what has been his occupation.

Answer. I am acquainted with him; he lives in Harrison county, and I lived with him from the year 1834 to the year 1840; he resided on a farm, and about 1839 built a large steam mill and distillery; from 1836 to 1840, when I left there, he was engaged in buying horses and mules, and sending them to the South to sell; he sent off one drove a year, consisting from 25 to 60 head; they were sent, as I understood, from him and his son, who drove the stock; that it was sold in the Georgia market; he was, also, during the same time, engaged in selling by retail cotton yarns, cotton cloths, French brandy, wine, sugar, coffee, nails, tea, spice, pepper, ginger, raisins, and such articles.

Question by same. Did he keep the above articles of merchandize, above enumerated, merely to pay off the hands which he had in his employ, or did he keep them to vend in the neighborhood as a merchant?

Answer. His hands in his employ purchased as other people did, but he kept them to vend in the neighborhood as a merchant.

Question by same. Are you able to say what capital he had invested in merchandize?

Answer. I am not; he generally kept a pretty good stock on hand; I do not think it was a large stock; and he sometimes for a short time had his assortment broke, but would get it supplied again. The capital in purchasing and droving stock to the South was to a large amount; but in that business he was in partnership with John L. Shawhan, and one year with John Lail, except one year, when he purchased about 60 head of horses and mules, and drove them on his own account.

And further this deponent saith not.

E. D. McADAMS.

Also the deposition of Joseph Ammerman, taken at the same time and place, to be read as evidence on the trial of the same cause; who, being of lawful age and duly sworn, deposeth and saith:

Question by solicitor for petitioner.

State what you know about the defendant, Benjamin Brandon, for the last five years, being engaged in purchasing and droving horses and mules to the southern States for sale; and about his being engaged in retailing merchandize.

Answer. He has been engaged in partnership with J. L. Shawhan, one year with John Lail, and one year by himself, in buying and driving horses and mules to the South; he was pretty extensively engaged in

business; I sold him two horses myself, and know of his purchasing many others; I have purchased of him, at various times, cotton cloth, cotton yarn, sugar, coffee, and tobacco, and other articles; sometimes he seemed to have a good supply, and at other times he did not seem to have any on hand, at least of the articles that I wanted.

And further this deponent saith not.

JOSEPH AMMERMAN.

Also the deposition of Benson Roberts, taken at the same time and place, to be read as evidence on the trial of the same cause; who, being of lawful age and duly sworn, deposeth and saith:

Question by solicitor for petitioner.

Were you at the residence of the defendant, Benjamin Brandon, about the 6th day of April last? And if you were, state what then occurred; and particularly state what then occurred in relation to the execution of an attachment; and whether Benjamin Brandon then secreted himself, or kept out of the way to avoid the execution of the process.

Answer. I was there about that time, and was told there was an attachment out against his property, of which fact I informed him, and he then said he would keep out of the way, until he could execute a deed of trust for the benefit of his creditors; and he has since informed me that he did keep out of the way until after dark, and came to town that night, and did make a deed of trust to Wm. A. Withers, for the benefit of his creditors; by an arrangement between myself and him, I was to send a horse to meet him at Brown's Gate, about a mile from his house, about dark, for him to ride to town that night to have the deed of trust executed; I did have the horse sent to him pursuant to the arrangement; William A. Withers was at Col. Brandon's at the same time, and by arrangement with Col. Brandon, he was to go to town and have the deed of trust prepared, and meet Brandon at James Allen's, about ¾ of a mile from town, at 10 o'clock at night, to have it executed. This deponent has no interest in this matter, and is entirely friendly with Brandon and Lail both; and further saith not,

BENSON ROBERTS.

Also the deposition of William Patton, taken at the same time and place, to be read as evidence in the same cause; who, being of lawful age and duly sworn, deposeth and saith, that about the last of March, 1842, he had a conversation with the defendant, Benjamin Brandon, in which conversation Brandon stated, that he had been threatened with attachments against his property, and if attachments were gotten against him, he did not know what he would do; that he could not pay his debts in that way. He has since told me that he had made a deed of trust, to prevent his property from being sacrificed by attachment.

Question by counsel for petitioner.

Do you know whether Brandon, for some 4 or 5 years, has been engaged in buying horses and mules, and driving them to the southern States for sale; and about his having been engaged in selling merchandize by retail?

Answer. I know that he has for several years been engaged in buying horses and mules, and driving them to the southern States for sale; I do not think I sold him*self* but one horse for that purpose; in 1839 or 1840 I sold him one horse to drive; I know he has kept groceries to sell; I have myself bought about $50 00 worth a year, for two years, consisting of cotton yarn, sugar, coffee, tobacco, and some copper ware, purchased by him in Lexington; there may have been other articles purchased by me, which I do not now remember.

WILLIAM PATTON.

Also the deposition of William Gray, taken at same time and place, to be read as evidence in the trial of said cause; who, being of lawful age and duly sworn, deposeth and saith:

Question by solicitor for petitioner.

State what you know about Benjamin Brandon's being engaged in buying horses and mules, and driving them to the South for sale, and what you know about his being a retailer of merchandize? And if you know anything about his keeping out of the way, to execution of attachments or other process, say what you know on that subject.

Answer. I know, from the general understanding in the neighborhood, that he has for some years been engaged in buying horses and mules, and driving them to the southern States to sell; I never sold him any myself, but have been at sales frequently, where he and J. L. Shawhan were purchasing stock, which they said was for that purpose, and I endorsed a bill of exchange for them for $1,000, which was to have been paid in Columbia, South Carolina, by Cincinnatus Brandon, the son of Benjamin Brandon, out of the proceeds of stock which he was driving for his father. I have been in the habit of buying cotton yarn, sugar, loaf and brown, tea, coffee, &c., &c., from Benjamin Brandon, for several years; the last article was a barrel of sugar, in February, 1842; I have been in his grocery, and he kept groceries, such as I have named, and other articles in that line, for sale; after he made the deed of trust, I was at his house to make a settlement, and among other things he told me, that he had kept out of the way of the officer, to prevent him from executing attachments on him until he made the deed of trust; that the propriety of making a deed of trust was first *executed* by William A. Withers, and that he then suggested Withers to act as his trustee, who after some persuasion agreed to do so.

WM. GRAY.

Also the deposition of William Snodgrass, of lawful age, and duly sworn, deposeth and saith, that he knows the defendant, Benjamin Brandon, has been engaged for some years in buying horses and mules, and driving them to the southern States to sell, and he knows that he has for some years kept groceries for sale; has been in Brandon's grocery store and bought some. He was with Brandon in town on the night he made the deed of trust, and heard Brandon say he had kept out of the way to prevent the officer from serving attachments until he could execute the deed of trust.

WM. SNODGRASS.

The foregoing depositions of E. D. McAdams, Joseph Ammerman, Benson Roberts, Wm. Patton, William Gray, and William Snodgrass, were taken before me, as commissioner in bankruptcy, for Harrison county, at my office, in the southeast corner of the court house, in the town of Cynthiana, on Monday, the 31st day of October, 1842, between the hours of 10 o'clock, A. M., and 6 o'clock, P. M., for the purpose, and pursuant to the motion herewith filed, and accompanying these depositions, were signed by the deponents in my presence, and sworn to before me. The defendant, Brandon, himself being present at the examination.

In testimony of which I have hereunto set my name, as commissioner as aforesaid, this 31st day of October, 1842, and certify the same to court. Done in duplicate.

JOHN O. HODGES.
Commissioner.

The deposition of Asbury Broadwell, taken at the law office of John O. Hodges, in the southeast corner of the court house, in the town of Cynthiana, Harrison county, on Thursday, the 10th day of November, 1842, pursuant to notice, to be read as evidence for the petitioner, in a case now depending in the United States Kentucky district court in bankruptcy, in which John Lail is petitioner against Benjamin Brandon, to have him declared a bankrupt. This deponent being of lawful age, and first duly sworn, deposeth and saith:

Question by the solicitor for the petitioner.

Are you acquainted with the defendant, Benjamin Brandon; and if you are, where does he reside; and are you acquainted with the extent of his indebtedness; and if you are, state how much he owes.

Answer. I am acquainted with Benjamin Brandon; he resides in this county, about five miles from this place. He is largely indebted; I do not know to what amount, $10,000 or upwards; he owes me upwards of $3,000, for which I have a judgment and execution.

And further this deponent saith not.

A. BROADWELL.

Also the deposition of George Lail, taken at the same time and place, to be read as evidence in the same cause, who, being of lawful age and duly sworn, deposeth and saith:

Question by solicitor for petitioner.

Are you acquainted with the defendant, Benjamin Brandon; and if you are, state where he resides; and if you know, state whether said Brandon is indebted to the petitioner, John Lail; and if you know, state how much.

Answer. I am well acquainted with Benjamin Brandon; he lives in this county, about five miles from this place; he, said Brandon, is indebted to the petitioner upwards of $2,000. Brandon was indebted to the petitioner, John Lail, in upwards of $100; and said Lail, as the said Brandon's surety, paid for him upwards of $700. Lail was security for Brandon in another debt for $800, on a note due to the bank, *and*

and for that debt the petitioner, John Lail, has executed his own note, with security, and released Brandon from the debt to the bank; he is also security for Brandon in other sums to a considerable amount.

And further this deponent saith not.

GEORGE LAIL.

The foregoing depositions of A. Broadwell and George Lail, were taken, subscribed, and sworn to, before me, as commissioner in bankruptcy for Harrison county, State of Kentucky, at the time and place, and for the purposes stated in the caption hereof, and agreeable to notice accompanying these depositions, which I do hereby certify to the district court of the United States, for the Kentucky district, in bankruptcy.

Witness my hand this 10th day of November, 1842.

JOHN O. HODGES,
Commissioner, Harrison county, Ky.

Upon true copies of the order filing the original petition, the following certificates of publication were made, to wit:

"FRANKLIN COUNTY, KY., *Oct.* 25, 1842.

Published in the Commonwealth, on the 11th, 18th, and 25th of October, 1842, being all the regular publications of the paper between the fifth day after the date of the above order, and the fifth day before that fixed for the hearing of the petitioner.

A. G. HODGES,
Publisher.

Sworn to before me by A. G. Hodges, at the district aforesaid, this 25th day of October, 1842.

J. H. HANNA, *Ck. K. D C.*

Published in the Kentucky Yeoman on the 13th, 20th, and 27th October, 1842, being all the regular publications of the paper between the fifth day after the date of the above order, and the fifth day before that fixed for the hearing of the petitioner.

WILLIAM TANNER,
Editor.

Sworn to before me by William Tanner, at the district aforesaid, this 28th day of October, 1842.

JOHN H. HANNA, *Ck. K. D C.*

No. 1,284. United States Kentucky district court, in bankruptcy, November 22d, 1842.

JOHN LAIL, of Harrison county,
vs.
BENJ. BRANDON, merchant, of Harrison county.

The prayer of the petitioner, that the defendant be declared a bankrupt, having been heard upon the allegations of the petition, and the

proofs taken and filed, (the defendant having failed to answer,) and now having been fully considered:

It is found and adjudged by the court, that the said Benjamin Brandon, of Harrison county, being a retailer of merchandize, and indebted as in the petition mentioned, did, by making the deed of conveyance and assignment to William A. Withers, of all his property, real, personal, and mixed, and rights of property, subject to the payment of his debts by the laws of the State, bearing date the 6th day of April, 1842, and on the 7th day of that month and year admitted to record in the clerk's office of the Harrison county court, and in the petition mentioned, whereof a copy is *here* filed here, now adjudged a fraudulent conveyance and assignment; and by concealing himself to avoid being served with process, whereby a suit had been commenced against him, thereupon became and is a bankrupt.

Perry Wherritt is appointed the assignee, and required to execute bond in the penalty of $5,000, with two sufficient sureties.

Br. Bank, N. Bank Ky., Paris."

Assignee's bond, to wit:

We, Perry Wherritt, Thomas B. Woodyard, and L. Oxley, acknowledge ourselves bound to the United States of America, in the penal sum of $5,000, and bind ourselves, our heirs, &c., jointly and severally, to the payment thereof.

The condition of this obligation is however such, that whereas the said Perry Wherritt has been, by the district court of the United States, for the Kentucky district, in bankruptcy, appointed assignee in the case of Benjamin Brandon, on his petition, declared a bankrupt by the decree of said court.

Now, if the said Perry Wherritt shall duly and faithfully perform all the duties of assignee, and comply with all the orders and directions of said court in said case, then this obligation shall be void, otherwise remain in full force.

Witness our hands and seals, this 2d day of December, 1842.

P. WHERRITT, [SEAL.]
TH. B. WOODYARD, [SEAL.]
L. OXLEY. [SEAL.]

Attest: JOHN O. HODGES, *Com'r.*

The deposition of witnesses, taken in the court house, in Cynthiana, on Thursday, the 8th day of February, 1844, to be read as evidence for the complainant, in a suit of chancery now depending in the United States Kentucky district court, in bankruptcy, in which Perry Wherritt, as assignee of Benjamin Brandon, a bankrupt, is complainant, and John L. Shawhan and others are defendants.

The deposition of William A. Withers, of lawful age, and duly sworn, deposeth and saith:

Question by complainant's counsel. You will state, if you know Benjamin Brandon, late of Harrison county, how long you knew him,

what his occupation was for the two years before the 22d Nov'r, 1842, particularly at and before the 6th day of April, 1842, running back for six months from that time; whether he did or not use and exercise the trade and occupation of a merchant, grocer, or factor, buying and selling goods, wares, and merchandise, groceries, &c., &c., and of buying and selling horses, cattle, &c., in Kentucky, and driving to southern or other markets; whether he was or not a resident of Harrison county, and district of Kentucky, for some time, extending back from the 22d Nov'r, 1842, stating how long.

Answer. I have been well acquainted with Benjamin Brandon for more than 20 years; farming, stilling, trading in stock, and other articles, was his occupation during that time; and up to the 6th day of April, 1842, he was in the milling and distilling business, and kept on hand some cotton, sugar and coffee, for the purpose of bartering for grain, and supplying his customers; on the 6th day of April, 1842, I was at the house of Brandon, and some of his customers were there, who wanted sugar, and other groceries, and he promised to bring some from Lexington to supply them in a short time, having no sugar or coffee; he also purchased horses in this county, as he alleged for the purpose of driving to market, though of my own knowledge do not know that he drove the stock himself, but I know he told me he did by agency, and frequently spoke of the money he expected to get from the South for the sale of his stock; I know that this was his occupation from the 6th of April, running back several years; I do not know what may be technically termed a merchant or factor, but he kept spun cotton, sugar and coffee, pretty generally for sale, and I suppose he purchased them, having no cotton factory, sugar farm, or coffee plantation, to my knowledge; I also know he has been a resident of Harrison county, and State of Kentucky, for more than 20 years from 22d November, 1842.

Question 2d. Whether you do or do not know that said Brandon was believed and understood to be broke and insolvent, and unable to pay his debts, for some length of time before the said 22d day of November, 1842, stating, if you know, the length of time it was so understood; whether you do or not know that said Brandon was sued for sums of money, by divers persons, at and before the said 22d November, 1842, stating by whom, and for what amounts, and in what courts; whether said Brandon did or not avoid the service of process on him, which had issued on one or more suits against him, stating the time or times, and the process so avoided, and how avoided; whether said Brandon did or not, subsequent to the 1st day of January, 1841, or at any other time, in contemplation of bankruptcy, and with a full knowledge of his inability to pay his debts, or insolvency, or in contemplation of a passage of a bankrupt law, make to one or more of his creditors a conveyance, gift, or assignment of his property, or rights of property, giving a preference to his creditors, or some of them? State specially all you know in answering this question, giving dates, names, kind of transfer, to whom made, what property, whether all or part, and for what consideration. Did or not the person or persons to whom any

such conveyance or transfer of property was made, know of the insolvent or bankrupt condition of said Brandon, his inability to meet his debts, the character of business said Brandon followed, his buying and selling goods, wares, and merchandise, his buying and selling horses in Kentucky, or in the South; where did such person or persons live, to whom any such conveyance or assignment was made; how far from Benjamin Brandon's, and how far from the court house, where any such suits were pending against said Brandon; did or not such deed, conveyance, or assignment, purport to convey all the rights of property of said Brandon, of every kind and description; or if you know of any property other than what was conveyed, state and describe the same, and where the same was. Do you know any creditor or creditors other than those secured, or attempted to be secured, by said Brandon, by any such conveyance or assignment aforesaid; if so, state who they were, and what amounts was owing to them by said Brandon, and whether any of the persons named in such deed, conveyance, or assignment, and who were secured, or attempted to be secured thereby, had any knowledge of said Brandon owing others, of his concealing himself to avoid the service of process, or of his giving preference to themselves; state where John L. Shawhan, Benjamin Berry, and Daniel Shawhan resided in 1841 and 1842, how far from Benjamin Brandon's, and whether they had or not a good opportunity of knowing all about said B. Brandon's situation; where Isaac Miller, Greenup Rennington, George H. Perrin, and William A. Withers lives, and what opportunity they had of knowing said Brandon's situation and circumstances.

Answer. I know the impression was general that Benjamin Brandon was unable to pay his debts on the 22d November, 1842; and I, with many others who knew pretty well the trading of Brandon, believed that, whenever a *brake* was made on him by his creditors, that he would prove insolvent; this opinion I had entertained for one or two years before the execution of the deed of trust to me.

I do not know that Brandon was sued for large amounts of money by divers persons before the 22d November, 1842; the suits I have reference to *was* in the Harrison circuit court, in the State of Kentucky, the names of the parties not now recollected; Wm. Griffith and Thos. Waldon, I think, were two; I once made an estimate of the amounts and names of the parties, but have it not at hand at this time; the amount was large; also, I recollect of a judgment I obtained, as agent or guardian for Boyd's heirs, for about the sum of from $100 to $125, precise amount not recollected; I think, from recollection, that the amount of judgments could not have been less than $10,000, perhaps much larger; but as to the amounts I am not positive. As to Brandon's avoiding the service of process, except the day on which the deed of trust was executed by him to myself, on that day, whilst at his house, Benson Roberts came there and informed Brandon that an attachment had been issued against him by some one or two of his creditors, and urged on him the necessity of his keeping out of the way until he could get to town and execute a deed of trust, which I was informed he did; but on

no other occasion do I believe that he evaded the process of the law. I know that Brandon did execute to me a deed of trust, for the benefit of all his creditors, on the 6th day of April, 1842, in which deed he conveyed to me, in trust, all his property, the property to be sold, giving to his creditors the right to purchase; and for any property so bought, he was to have a credit at the price bid, and if over the amount of the debt, to be paid in 12 months, on the personal property, and the overplus to be divided pro rata amongst his creditors; his real estate to be sold in 3 payments.

Whether this was done in contemplation of bankruptcy, I am unable to state; I think he had no idea of his ability of paying his debts, unless his property sold at a very high price; and he contemplated, by creating this kind of competition between his creditors, his property would sell very high, and thereby meet his liabilities. I, as the trustee, knew of his bankrupt condition; knew his business well; and resided in the town of Cynthiana, Ky., about 4½ miles from Brandon's house. I know of no property but was to be subject to the order of the trustee; the sale was to have been made in accordance with previous arrangement for the sale, which will more particularly be explained by a reference to his advertisement. I know of no creditor left out by his conveyance. John L. Shawhan resided near to, and adjoined lands with Brandon; Benjamin Berry resided in Bourbon county, I should say some 6 or 7 miles from Brandon's; Danl. Shawhan also lives in Bourbon county, something like the same distance, perhaps nearer; the distance I am unable to state positively. I know Berry and the Shawhans, and should presume they had as good an opportunity of knowing the situation of Brandon as any other persons; one of them, John L. Shawhan, being his former partner; Daniel is his brother, as I have been informed. Isaac Miller, George H. Perrin, and Greenup Rennington, live in the town of Cynthiana, Harrison county, Ky., and presume they know all about Brandon's condition.

Question by John L. Shawhan's counsel. How long did you remain in possession of the land, and other estate, conveyed to you by Benjamin Brandon by said deed of trust, dated 6th of April, 1842?

Answer. I took possession of the estate at the time of the execution of the deed, and appointed an agent to receive it, and attend to it for me; at the June or September term of the Harrison circuit court, there was a trial in part, a change of venue granted, and the case removed to the Bourbon circuit, and a trial had at their fall or spring term, when the deed was declared void, and the property passed out of my hands.

By same. When the petition in bankruptcy was filed against Benjamin Brandon, were you a creditor of said Brandon, and to what amount?

Answer. Individually I have no claim against Brandon; as one of the partners of Withers & Stowers, we have a small debt due us; I should think from fifteen to sixteen dollars.

By same. On the 9th December, 1842, when Benjamin Brandon gave in his inventory of estate to John O. Hodges, the commissioner in bankruptcy, were you a creditor of said Brandon's, and to what amount?

Answer. I was a creditor in the manner stated before, and for the amount there stated. The partners in the firm of Withers & Stowers being equal.

By same. Benjamin Brandon has stated in his inventory that he was indebted to you by the note of Brandon & Shawhan for $113 25, upon which a judgment had been obtained in the Harrison circuit court, was that debt due to you by said Brandon at that time, as he has stated?

Answer. The note spoken of is not mine, nor never was; it fell in my hands as trustee for the heirs of Joseph Boyd, deceased, and is alone for their use.

By same. Is or not said note made payable to you?

Answer. I will here give you an exact copy of the note.

$113 $\frac{25}{100}$.

Twelve months after date, we, or either of us, promise to pay Wm. A. Withers, trustee, $113 $\frac{25}{100}$, for value received, this 3d day of October, 1839.

Signed, BENJ. BRANDON & SHAWHAN.

By same. Was Brandon the principal debtor in that note, and has the debt been paid to you, or to any other person?

Answer. I do not know, or now recollect, who is or was the principal debtor; it was for property bought at the sale of A. M. Boyd, deceased; and I have not received the money, or any part; I placed an execution in the hands of the sheriff, and do not know whether or not he has made the money.

By same. Benjamin Brandon in his inventory has stated that you held a note on him, payable to you as guardian of Ann M. Boyd, upon which a judgment was rendered in the Harrison circuit court for $121 90; did you hold such a note; was a judgment obtained thereon; has the amount of the note or judgment been paid to you, or to any other person?

Answer. The note spoken of in the inventory, No. 168, has not been sued on; also, he is mistaken as to whom the note was executed to. I will here insert a copy.

"Twelve months after date I promise to pay A. M. Boyd $120, for the hire of a boy named Harrison, and promise to treat and clothe him well.

Given under my hand and seal this 25th day of Dec'r, 1838.

Signed, BENJ. BRANDON.

Five dollars of the above note I allow the said Brandon to pay to the boy Harrison.

This note is now in my possession, and unpaid.

By same. Benjamin Brandon stated in his inventory that he was indebted to the firm of Withers & Stowers in the sum of $15 by note; is that debt still due to you and the other member of said firm.

Answer. The note, No. 169, spoken of, is still unpaid; and I am one of the firm of Withers & Stowers.

By same. Benjamin Brandon has stated in his examination before

the commissioner in bankruptcy that, in the latter part of the winter of 1842, he agreed with you to let you have 50 barrels of whiskey, at 16 cents a gallon, in part discharge of a debt which he owed you; did Brandon owe you the debt spoken of by him, and has it ever been paid?

Answer. I purchased of Brandon 50 barrels of whiskey in February, 1842, at 16 cents a gallon, in discharge of a debt he owed the firm of Withers & Stowers; and discharged the debt he owed, except the note before spoken of, No. 169; and on an adjustment of our accounts this balance was found against him, for which the note was executed, and is still unpaid.

By same. Did you get the 50 barrels of whiskey from Brandon before the deed of trust was executed, or afterwards?

Answer. I received a part of the whiskey some time in the month of March, 1842; the balance was received by me at the still-house on the day, and the deed was executed that night; my business that day at the house of Brandon was specially to receive my whiskey, and for no other business whatever.

By same. Was there a sufficient quantity of whiskey at Brandon's still-house, on the day the deed of trust *of* executed, to fill your contract, or was a part of the whiskey made afterwards?

Ans. I am under the impression I received and marked all but one barrel, and that was then running from the still, and, so soon as off, to be marked and set apart for me by Cincinnatus Brandon on that evening, but I did not stay to see it done.

By same. How much whiskey did you get from Brandon's still-house after the deed of trust was made, and on what account?

Ans. I received 1,840 gallons, supposed to have shrunk 100 gallons; I made at the still-house, after I came in possession under the deed of trust, in barrels, 53.

By same. Did you attend to the making of said whiskey in person, or was it made by Cincinnatus Brandon, the son of Benjamin Brandon, while said Cincinnatus was living with his father, and under the age of twenty-one years?

Ans. I employed Cincinnatus Brandon to assist me in carrying on the distillery, and to have a general supervision over the whole; that I was frequently there during the month that I had possession of the still-house, and gave all orders respecting the purchase of grain, &c., and held all subject to my control.

By same. How much did you pay Cincinnatus Brandon for his services?

Ans. I have not paid him one cent; my contract with him was for him to have a general supervision, and I would pay him what was right; he has not yet brought in his account, nor do I believe he will charge anything.

By same. How much whiskey did Cincinnatus Brandon make at the still-house while he superintended it as your agent; and what became of the whiskey?

Answer. I have already stated that I received 1,840 gallons, less 100

gallons for waste; this was the whole made, after defraying the expenses attending on the making.

By same. Was there any grain, or meal, or beer, in the still-house when you took possession, and what became of it?

Ans. I know of no grain in the still-house, except a lot of rye, borrowed of Wm. Patton, which I paid back; the beer, I understood, was run into whiskey, and applied to the payment of some grain contract made by Brandon; of this I had nothing to do with, and know nothing, only from information.

By same. How long did Cincinnatus Brandon run the still after you took possession, and how much whiskey did he make in a week?

Answer. I run the still about a month, used about 60 bushels of grain per day, and the *yeald* was about 2½ gallons per bushel, or a little over.

By same. Did Cincinnatus Brandon sell the balance of the whiskey besides what you got, and at what price, and to whom?

Answer. I do not know of his ever selling one gallon except to pay for grain; and, after paying for grain, paying for hand hire, in part only, this balance was all left, and was considered a first rate turn out.

At this stage of the proceeding, there not being time to complete the examination on this day, the matter was adjourned over until to-morrow morning, at 9 o'clock, to meet at the same place.

Friday morning, Feb'y 9, 1844.

Met at the time and place named in the adjournment, and continued the examination as follows:

Question by Perry Wherritt. Was the defendant, John L. Shawhan, present when Brandon executed the deed of trust to you; and, if he was, did he approve of the execution of the deed of trust by said Brandon to you?

Answer. On the day that Brandon executed the deed of trust to me I met with John L. Shawhan at the house of Brandon, and, after Shawhan had left the house, Benson Roberts and myself left in a few minutes, and overtook Shawhan and his company on the farm of Brandon, and informed Shawhan of the determination of Brandon, and that I was instructed by Brandon to have the deed prepared, in accordance with his former plans; when this was confirmed by Mr. Roberts, Shawhan expressed himself satisfied, provided the deed was executed on the terms I had stated; that he then came on to town; was in the law office of James R. Curry when the deed was drawn and executed, and expressed himself satisfied.

Question by John L. Shawhan's counsel. Was the deed of trust read in the presence of Thos. B. Woodyard after it was drawn, and before it was acknowledged before said Woodyard as clerk?

I do not know that the deed was read to Woodyard; I know that it was acknowledged before him, and was read in the office, Woodyard present; but, in my opinion, he was asleep whilst the reading was going on.

By same. Do you recollect that Woodyard was asleep when the deed of trust was read, or do you merely give it as your opinion?

Answer. I have already *gave* it, as my opinion, he seemed to sleep; it would be impossible for me to say whether he was positively asleep or not?

By same. Was the deed of trust read immediately before it was acknowledged, or was it read some time before the acknowledgment?

Answer. I am inclined to think it was immediately before it was acknowledged.

By same. Was Woodyard sitting up or standing when the deed was read?

I am of opinion he was sitting, with his head leaning on a table.

By same. Do you recollect that Woodyard was sitting with his head leaning on a table when the deed of trust was read, or do you merely give it as your opinion*ion?*

Ans. I have once answered that I gave it as my opinion, and think I am not mistaken in that opinion.

By same. What induced you to form that opinion; and have you any recollection of seeing Woodyard leaning on a table when the deed of trust was read?

Answer. I do most positively say he was sitting with his head resting on the table during a part of the night, and believe it was in that attitude when the deed of trust was being read; I was induced to believe he was sleeping from the fact of his *snoring*, and my jarring him on the subject; he had remarked, he had been disturbed in his sleep the night before with a sick child, and did [not] go to sleep until after 2 o'clock; that he had risen early in the morning, had gone to Millersburg, attended to a masonic funeral procession, had marched a considerable distance, and returned about night very much fatigued.

By same. Was Woodyard asleep when the deed of trust was acknowledged?

Answer. I think not.

By same. Did any body waken Woodyard after the deed of trust was read, and before it was acknowledged before him as clerk?

I am not able to state.

By same. Was John L. Shawhan present when the deed of trust was acknowledged before Woodyard?

Answer. I am clearly of opinion he was, and the evidence of a world would not convince me to the contrary.

By same. Did John L. Shawhan say any thing at the time the deed of trust was acknowledged before Woodyard?

Answer. I do *no* recollect that he did at that moment; but during the time we *we* in the office, after the execution of the deed, he expressed himself satisfied, and remarked he could then sleep soundly; and on going from the office to my house this was *this* subject of conversation whilst I was at my house, and I thought, from his remarks, he was perfectly satisfied.

By same. Was Woodyard asleep after the deed of trust was acknowledged?

Answer. I believe Woodyard left the office immediately; I do not know whether he *slep* or not.

By same. Who was John L. Shawhan conversing with after the deed of trust was acknowledged?

Answer. I do not recollect of any particular person. The remark of his, as above stated, seemed to be general; but from the lapse of time, it would be out of my power to point to any particular person.

By same. Was John L. Shawhan in Curry's office when you went there on the night the deed of trust was acknowledged, or did he come afterwards?

Answer. I think John L. Shawhan came in after I did.

By same. When you left Curry's office after the deed of trust was acknowledged, who went with you?

Answer. Benjamin Brandon, Cincinnatus Brandon, and William Snodgrass; and before entering my house, was joined by John L. Shawhan and James R. Curry. Curry left without going into the room where the company were; I do not recollect of any other person. And further this deponent saith not.

WM. A. WITHERS.

Benson Roberts being next called, he being of lawful age, and duly sworn, deposeth and saith:

Ques. first. *Was* you at the house of Benjamin Brandon, in company with William A. Withers, on the day the deed of trust was executed by Brandon to said Withers; if so, on leaving the house, say what conversation took place between you, John L. Shawhan, and Withers, in relation to the contemplated deed of trust?

Answer. I was at the house of Brandon, in company with Withers and John L. Shawhan, on the day the deed of trust was executed. After we had left the house, there was a conversation with Shawhan by Withers and myself; in which conversation, Shawhan was asked if he would be satisfied, provided the sale was carried on on the terms and principles advertised by Brandon; to which Shawhan replied that he would. I told Shawhan that that was the intention. Shawhan wished to see Col. Brandon. I told him that Brandon could not be seen at that time.

Quest. by Mr. Wherritt. Do you know that John L. Shawhan was apprised at the time that a deed of trust was to be made that night, or some time soon, to Withers, and expressed himself satisfied, provided he was not left out of the deed of trust, and the provisions of the sale *was* carried out as advertised?

Answer. From what passed in the presence of Shawhan, and with him, I drew the conclusion that Shawhan well knew that a deed of trust was to be made to Withers; but whether it was spoken of to him, or in his presence, I do not know; I do not recollect any such conversation with him about making the deed of trust; but I thought, and inferred from what did take place, that Shawhan knew or expected a deed of

trust was to be made, and was fearful and uneasy that he would be left out of the provisions of that deed.

Question by same. Did you assure John L. Shawhan in that conversation that he would be included in the arrangement that was then about to be made and entered into between Withers and Brandon?

Answer. I did assure him that he would not be left out of the arrangement, and the sale would go on as advertised.

By same. Did he express himself satisfied with the arrangement when you informed him?

Answer. I think he seemed satisfied.

Ques. by same. Was he, John L. Shawhan, included in the deed of trust made to Withers?

Answer. I never have seen the deed, but have understood he was included in said deed of trust.

By same. How long did you know Benjamin Brandon, and what was his occupation for two years before the 6th day of April, 1842?

Answer. I have known him for 15 or 20 years; his occupation has been farming, milling, distilling, carpentering, and trading horses, mules, cattle, hogs, spun cotton, coffee, and sundry other things. During the whole time of my acquaintance with him, though for two years before the 6th day of April, 1842, he was engaged in trading more than formerly, and carried on farming more extensively.

By same. Did he not keep on hand a general assortment of groceries, spun cotton, &c., for six months next preceding the 6th day of April, 1842?

Answer. I think he did keep on hand an assortment of such articles, having got from him myself; and when his stock was exhausted, would send to Lexington and recruit his stock.

By same. Do you know he drove stock to the South for some time previous to the 22d day of November, 1842, and particularly up to the 6th day of April, 1842?

Answer. I knew he drove stock to the South, and continued the same up to the time of his failure.

By same. Whether you do or not know that said B. Brandon was believed and understood to be insolvent, broke, and unable to pay his debts, for some time before the said 22d day of November, 1842, stating if you know how long it was so understood. Whether you do or not know that said Brandon was sued for large sums of money by divers persons, at and before the said 22d day of Nov., 1842; stating by whom, and for what amounts, and in what courts.

Ans. I have thought him indebted largely, and it was generally believed in the neighborhood that he was in an insolvent condition, and had been for a year or more previous to the 22d November, 1842. I have understood he was sued in the county of Harrison, where said Brandon resided, for a considerable amount of money, before the 22d November, 1842. I do not know who sued him, and for what amounts.

Ques. by same. Do you know whether or not that said Brandon did or not avoid the service of process on him, which had issued in one or

more suits against him, stating the time or times, and stating the process so avoided, and how avoided?

Ans. I do know, as I told him myself, that an attachment was out for him, and he said he would keep out of the way until he could execute a deed of trust for the benefit of his creditors; and he has since told me that he did keep out of the way until dark, and then came to town and executed the deed of trust to Withers.

Ques. by same. You will say where John L. Shawhan, Daniel Shawhan, and Benjamin Berry, lived; how far from Benj. Brandon's; and whether they had not a good opportunity of knowing all about his business arrangements?

Answer. John L. Shawhan lived adjoining lands with Brandon, and not more than one-half mile from said Brandon. Berry lives about 3 or 4 miles. Daniel Shawhan lives some 5 or 6 miles. As to their knowledge of his business arrangements, John L. Shawhan was his former partner in business, and had as good an opportunity of knowing as any person; as to what Daniel Shawhan and Benjamin Berry knew of his business, I do not certainly know; Daniel Shawhan is the brother of John; they seem to have had some business transactions with him.

By same. State the value of the land and other property which belonged to Benjamin Brandon; when he conveyed the same away to any one; who purchased the same, at any sale thereof?

Answer. The land was worth about $25 per acre, there being over 300 acres; the remainder of his property would have sold for, or been worth $5000; as to who purchased the personal property, it was sold to divers persons. I do not know who purchased the land, but have been informed that it was purchased by John L. Shawhan.

Question by same. State, if you know, how and why the deed was made by Brandon to Withers of all his property, except what the law allowed him; state, if you know, whether the persons or person named in that deed were present when the same was made, or had any knowledge thereof and were present; and state further whether said deed was or not made to hinder, delay, or defraud other creditors of said Brandon, and to prevent sales under execution, which had or was about to issue on judgments against said Brandon, and to be levied on his property; state, if you know, what was the consideration of the debts claimed by the persons secured by the conveyance of property; whether or not a considerable portion of said claims against said Brandon were not usury.

At this stage of the proceedings, there not being time to complete the examination on this day, the matter was adjourned over until tomorrow morning at 9 o'clock, to meet at the same place.

Saturday morning, February 10, 1844.

Met at the place and time, and pursuant to the adjournment on yesterday, and resumed the examination of Benson Roberts, who pro-

ceeded to answer the last question proposed to him on yesterday, as follows:

Ans. I state that an attachment was then issued against him, and he wished to sell his property for the benefit of all his creditors, and not have it sacrificed by officers: John L. Shawhan and William Snodgrass, have told me, in a conversation since the deed of trust was made, that they were in town at the time the deed of trust was made, and were satisfied with the arrangement. I think the deed of trust was made to prevent sales under execution, and to enable him to dispose of his property in his own way, but not to defraud any of his creditors; the consideration of the debts of those secured originated some for money borrowed, stock, grain, negroes, &c.; I have no knowledge of usury in any of the debts, only what some of the creditors said to me. Broadwell and others, being creditors, said there was usury in their claims.

Question by same. State, if you know, how much Benjamin Brandon was indebted to John Lail, at the time he conveyed his property, and avoided the service of process.

Ans. John Lail told me Brandon owed him a good deal of money, besides he was security for him to a considerable amount, but do not now recollect how much.

Question by same. State, if you know, whether John L. Shawhan does or not claim the land as his own property since the purchase.

Ans. I do not know that I have had any conversation with Shawhan since the land was sold; cannot say.

Question by same. State what the assignee could probably obtain for said land with the claim or pretended claim set up by said purchaser; and do you not know that such claim or pretended claim would in fact prevent the assignee, Wherritt, from selling at any thing like a fair price.

Ans. I will say, under the circumstances and claims, I would not give much for it, nor do I believe it would sell for a fair price.

By John L. Shawhan's counsel. When your deposition was taken in the suit in chancery, in which John L. Shawhan and company are complainants, and Benjamin Brandon, &c., are defendants, the following question was put to you, to wit: Did Withers and Brandon consult John L. Shawhan about making the deed of trust? To which you made the following answer, to wit: "No, they did not, as I heard of." I now put the same question to you, and wish you to state whether you now make the same answer.

Ans. Yes, I do.

By same. When your deposition was taken in said case, the following question was put to you, to wit: "Did you inform John L. Shawhan on that day, before you left Brandon's, that he had gone off to keep out of the way of the sheriff?" To which you made the following answer, to wit: "I do not recollect that I did; after Withers and myself left the house, and had gone part of the way to the still-house, Shawhan stated that he wished to see Brandon, and I informed him that Brandon was gone, and he, Shawhan could not see *him*. Withers then asked Shawhan if he would be satisfied if the sale would go on as it was advertised; and he answered that he would. Withers then called

Shawhan aside, and had some private conversation with him that I did not hear; Withers then called me up, and told Shawhan that the sale would go on as it was advertised; I told Shawhan that was the understanding with Brandon the last conversation I had with him; Shawhan then replied, that if that was the case, he was satisfied. We then all parted, and I do not know that there was any more said." I now put the same question to you, and wish you to state whether you now make the same answer.

Answer. I do.

By same. Had the sale of Brandon's property been advertised by him before the deed of trust was made to Withers?

Answer. It had.

By same. Was John L. Shawhan in the room when Brandon and Withers made the arrangement about making the deed of trust?

Answer. He was not there; there was no person present except Brandon, Withers, and myself.

By same. When your deposition was taken in the aforesaid suit in chancery, the following question was put to you, to wit: "Do you know whether the complainant, Shawhan, was privy to the execution of, and satisfied with, the deed of trust; and if you do know it, how did you obtain the information?" To which you made the following answer, to wit: "I am not in possession of any knowledge on that subject, except from hearsay." I now put the same question to you, and wish you to state whether you now make the same answer.

Answer. I do.

By same. While your deposition was taken, did, on yesterday or not, William A. Withers write down a question, and hand to the complainant to be put to you?

Answer. I do not know that he did.

By same. Did or not the complainant, on yesterday, state to you, that the defendants' counsel might be too hard for him, the complainant, but that he had Billy to help him.

Answer. The complainant did say that the defendants' counsel was too hard for him, but that he had Billy to help him; but whether he had reference to Withers aiding him in conducting the examination, or in writing, I do not know.

Question by P. Wherritt. Do you say that I said, on yesterday, that the counsel for the defendant was too hard for me, and that I had Billy to help me in this examination, or was there any thing said in reference to said examination?

Answer. Billy Withers was writing his answers to the questions propounded to him, when some conversation of the sort took place, and we were joking at the time, and I considered it a joke. I do not know what the reference of the language was to; my opinion was and is that the complainant had reference to writing, as Billy did not ask me any questions, nor did he aid in any way in conducting the examination, except by writing down his own answers.

Question by same. Do you not know that said Billy is not a lawyer,

nor is the assignee, the complainant in this cause; consequently, are unable to compete with Judge Trimble, the defendants' counsel.

Answer. I know that neither of the above named persons are lawyers, and it takes a hard hand to compete with the Judge.

By same. Judge Trimble, the counsel for the defendants, asks you the question as to your knowledge of Shawhan expressing himself satisfied in the execution of the deed of trust, it being a part of your deposition in the Bourbon circuit court, wherein you state only from hearsay. Do I understand, from this answer, that he never expressed himself satisfied provided he was not left out of said arrangement?

Answer. I say, in answer to this question, that at the farm of said Benjamin Brandon, when I informed said Shawhan the sale would go on as advertised, he expressed himself satisfied. But after the deed was executed to Withers, I know nothing only from hearsay, as it was done in the office of J. R. Curry, and I was not present.

And further this deponent saith not.

BENTON ROBERTS.

At this stage of the proceedings, and there not being time to commence the examination of any other witness on this day, the matter was adjourned over to meet again on Monday morning, February 12, 1844, at nine o'clock, at the same place.

MONDAY MORNING, 9 O'CLOCK, *February 12th*, 1844.

Met pursuant to adjournment on Saturday last, to continue the examination of witnesses, and the witnesses not being in attendance, it was agreed and concluded to adjourn over until to-morrow, Tuesday morning, at 9 o'clock, to meet at the same place.

TUESDAY MORNING, *February* 13, 1844.

Met pursuant to adjournment, and continued the taking of deposition as follows:

James Fraizer, of lawful age, and first duly sworn, deposeth and saith, in answer to the following questions:

Question by P. Wherritt. You will state, if you know Benjamin Brandon, late of Harrison county, how long you knew him, what his occupation was for two years before the 22d day of November, 1842, particularly at and before the 6th day of April, 1842, the day on which the deed of trust was made from Brandon to Withers, running back for six months from that time; whether he did or not use and exercise the trade of a merchant, grocer, or factor, by buying and selling horses, cattle, &c., in Kentucky, and by driving to southern or other markets; whether he was or not a resident of Harrison county, and district of Kentucky, for some time extending back from the 22d November, 1842, stating how long.

Answer. I knew Benjamin Brandon for at least fifteen years well; occupation farming and selling ever since I knew him; I know he purchased horses and sent them off to the South, and kept on hand a

general assortment of groceries, as I supplied myself with sugar, coffee, rice, and other articles, and also supplied some of my neighbors from his store, in my trading and bartering with said Brandon; I was also frequently sent by *to* him for groceries, for which I paid him *a* cash; he also kept on hand a general assortment of spun cotton, as I purchased of him at different times; this trade was kept up for several years, before the 6th day of April, 1842; he has been a resident of Harrison county, district of Kentucky, ever since I have known him, which has been, as before stated, some fifteen years.

Question by same. Whether you do or not know that said Brandon was believed and understood to be broke, insolvent, and unable to pay his debts for some length of time before the said 22d November, 1842, stating how long before that time it was so understood; whether you do or not know, that said Brandon was sued for large sums of money by divers persons, at and before the 22d November, 1842, stating by whom, and for what amounts, and in what courts; whether or not said Brandon did or not avoid the service of process on him which had issued on one or more suits against him, stating the time or times, and the process avoided, and how avoided; whether said Brandon did or not, subsequent to the 1st day of January, 1841, or at any other time in contemplation of bankruptcy, and with a full knowledge of his inability to pay his debts, or insolvency, or in contemplation of the passage of a bankrupt law, make to one or more of his creditors a conveyance, gift, or assignment of his property or rights of property, giving a preference to his creditors, or some of them; state especially all you know in answering this question, giving names, dates, kind of transfer, to whom made, what property, whether all or in part, and for what consideration.

Answer. I state that the general impression in the neighborhood was, that he was indebted more than he could pay; my own impression was, that he was insolvent and bankrupt for at least 6 months before the 6th day of April, 1842, which was more than 12 months before the 22d of November, 1842; it was longer than the time named above, as I sacrificed $300 to get $800, by taking a negro of him at more than I knew he was worth; as to his being sued for large sums of money, before the 22d November, 1842, I think he was sued before that time, but do not now recollect at what time exactly; I know he was sued in the Harrison circuit court for money, by George Mozee, Jas. Nesbitt, Wm. Snodgrass, for his mother, perhaps both of them; I do not know the amounts, only which Nesbitt told me, which amount was $800; Brandon told me he did avoid the service of process on him; I do not recollect what process it was he avoided, or how he avoided it; as to the conveyance, I know he did make a transfer of his property; I do not know at what time he made said conveyance; he told me he knew he could not meet his debts, in consequence of insolvency; the deed of trust was consequently made to Wm. A. Withers, for the benefit of his creditors, giving no one creditor a preference over another; my understanding was, that he conveyed all his property, without re-

serve. I do not know that he ever told me that he expected the passage of a bankrupt law, or contemplated taking the benefit of it.

Question by same. Did or not John L. Shawhan ever tell you, or say in your presence, that he was satisfied with the provisions of the deed of trust made by Brandon to Withers?

Answer. I do not recollect that he did.

Question by same. Did or not the person to whom any such conveyance or transfer of property was made, know of the insolvent or bankrupt condition of said Brandon, his inabilities to meet his debts, &c.?

Answer. I have heard Withers, the trustee, say he believed said Brandon was insolvent, and unable to pay his debts; I do not recollect at what time he told me so.

By same. Where did such persons live to whom any such conveyance or assignment was made; how far from Benjamin Brandon's, and how far from the court house, where any suits had been brought against said Brandon?

Answer. Withers, the trustee, lived about 4 miles from *from* Brandon's, and in the town where the suits were brought, being Cynthiana, Harrison county, Kentucky.

By same. Did Brandon convey all his property, and rights of property, of every kind and description, *and description*, or did you know any creditor or creditors other than those secured, or attempted to be secured, by said Brandon in the deed of trust to Withers?

Answer. He conveyed all his property, and rights of property, and to all his creditors, to be equally divided among them.

Question by same. State where John L. Shawhan lives, and where Daniel Shawhan lives, also Benjamin Berry, and did reside in 1841 and 1842; how far from B. Brandon's?

Answer. John L. Shawhan lives adjoining Brandon's place, Danl. Shawhan lives in Bourbon, about 4 miles, and Berry about three miles from Brandon's farm, also in Bourbon county.

Question by same. Did they have a good opportunity of knowing said Brandon's situation and circumstances?

Answer. I think they had as good an opportunity as any body.

By same. At what time did the complainant, Perry Wherritt, take possession of the land, and other property, which had belonged to B. Brandon, in Harrison county, and was it not before there was any decree to sell the same? If so, state when said Perry Wherritt obtained possession; state the value of the land, and other property, which belonged to B. Brandon, when he conveyed the same away to any one; state who purchased the same, at any sale, or pretended sale thereof, what was given therefor, by whom, and at what time the sale was made; state whether such person had or not been offering to sell said land, or some of it, since said purchase, and whether said person does not claim said land as his own now; state what the assignee could probably obtain for said land, with the claim, or pretended claim, set up by said person, and a knowledge thereof; whether said claim, or pretended claim,

would not, in fact, prevent the assignee, Wherritt, from selling at any thing like a fair price?

Answer. I state that Perry Wherritt rented to me Brandon's farm, on the 1st of January, 1843, and we entered into bond on the 15th day of February following, and I bound myself, together with the said Brandon, to cultivate, in grain, &c., about 150 acres, as supposed; also, said Wherritt contracted with Brown and Mozee, to rent them the residue of said farm, at the same time and rate, and they and myself were to surrender peacable possession on the 1st day of March, 1844; also my partner in the bond to Wherritt, who was on the place when we rented, told me he was then a tenant under Wherritt, the assignee, who had taken possession of the farm some time before the land was conveyed; I think the general impression was, and mine also, that the land would have sold for $30 per acre; Jno. L. Shawhan purchased the land when it was sold by the commissioner for John L. Shawhan's benefit; it was sold in different lots; the Mansion house and about 150 acres, sold for about, or a little over, $20 per acre; the balance did not sell for as much as $20 per acre; I think the land was sold about the 1st of July; Pugh Miller, who now lives on the place, and in the Mansion house, told me that John L. Shawhan rented the farm to him for one year, commencing about the 1st of February, 1844, which is all I know about his claiming said farm by the purchase; the land has not been conveyed to John L. Shawhan by the court; as to what the land would sell for under the circumstances, I would not give any thing in reason for it, nor do I believe it would sell for any thing like a fair price.

Question by same. At what time did you purchase the farm on which you now reside; and what you done with the Brandon farm when you left it; the unexpired term of rent, I mean?

Answer. I purchased the farm on which I now live about the 1st of September, 1843; I rented to Francis Brown the balance of my term, and gave possession about the 1st of October, 1843, and sold him my growing crop, provided I would give him possession at that time, which I did by locking the house and giving him the keys, his crop still in the field, a portion of which he bought of me.

By same. Has not John L. Shawhan had the house opened, and put into it a tenant?

Answer. I left the house locked, and he has put a tenant into it; I do not know *hoe* opened it; his tenant told me, as I stated before, he had rented for one year from John L. Shawhan.

Question by same. Did ever John L. Shawhan express any dislike to your having rented the farm, while you lived on it, or did he not sanction the course pursued by the assignee, Wherritt, in renting the farm?

Answer. He never said any thing to me about it; he said to some young men in my employ last summer, and threatened to take possession of the farm.

Question by same. Do you know how much money Brandon was owing John Lail at the time the deed of trust was made?

Answer. I do not.

By J. L. Shawhan's counsel.

Are you a creditor of Benjamin Brandon at this time; or were you at the time the petition in bankruptcy was filed against him; or were you a creditor of said Brandon's at the time that he made the deed of trust to Withers, in April, 1842?

Answer. I was once a creditor of said Brandon's, but I was not a creditor of said Brandon's when he made the deed of trust.

By same. Did Brandon pay you any thing since he made the deed of trust; and how much did he pay you; in what way; and at what time?

Answer. I do not recollect of my being a creditor of Brandon when he made the deed of trust, and of course he did not pay me any thing since.

By same. At what time did Brandon pay you any thing?

Answer. I have no recollection.

By same. Did Brandon pay you up all he owed you?

Answer. I agreed to lose what I did lose.

By same. Did you hold his obligation, and for how much?

Answer. Yes, I held several obligations on him, amounting to upwards of $800 in all.

By same. Do you hold any of said obligations at this time; and if you do not, what became of them?

Answer. I hold none; he paid them up before the deed of trust was made, and lifted them.

By same. Did the complainant, Wherritt, rent said farm to you, *or to you*, or to you and Brandon jointly?

Answer. Wherritt rented the farm to myself and Benjamin Brandon jointly.

By same. Did Brandon reside on the farm at the time that Wherritt rented it to you and said Brandon?

Answer. He did.

By same. How long did Brandon continue on the farm?

Answer. A short time, probably a month or two.

By same. What rent did you and Brandon agree to pay for the land, for the year that you rented it?

Answer. We agreed to pay so much for the whole tract, and agreed that each should pay a proportional part.

By same. How much did the obligation which you and Brandon gave for the rent of the land bind you to pay by the acre?

Answer. Wherritt rented to us a part of the tract supposed to contain 150 acres; Mozee, Brown, Brandon, and myself, rented the whole farm, and divided it; each man was to pay his proportion of the rent, when it was ascertained how much land he had; I had in possession a part of the land supposed to be 150 acres; if it holds out 150 acres, the rent which I am to pay is 78½ cts. per acre; if it don't hold out, the rent will amount to more by the acre.

By same. Was there any written contract between Wherritt, and Brown, and Mozee, when they rented the land from him?

Answer. I suppose there was.

By same. Did you ever see any writings between Wherritt, and Brown, and Mozee, concerning the rent of said land?

Answer. I do not know of any writings between them; we agreed to give our bonds separately; and myself and Brandon gave our bonds jointly; but I do not know whether Brown and Mozee gave any bond for the rent or not.

By same. When the contract for the rent was made with Wherritt, was Brandon a party to the contract, or was the contract made with you, Brown & Mozee?

Answer. Brandon and myself rented the part that I got, and Brown and Mozee rented the balance.

By same. What rent were Brown and Mozee to give for the part of the land that they got?

Answer. I do not know, except from what they told me.

By same. Were you present when Wherrit made the contract with Brown and Mozee for renting the land?

Answer. I do not recollect whether I was or not.

By same. How do you know the terms on which Brown and Mozee rented the land from Wherritt?

Answer. I understood from them that they were to pay for what land they had in the same proportion that we did for what we had rented.

By same. Did Brown and Mozee rent from Wherritt at the same time you did, or afterwards?

Answer. They agreed to take it at the same time we did; but whether they ever gave any obligation for the rent or not, I do not know.

By same. Did Brown and Mozee agree to pay rent by the acre for the land, or did they agree to pay a certain amount?

Answer. I have already answered it as plain as I know how above.

By same. Did Brown and Mozee agree to pay the rent to Brandon, or to Wherritt?

Answer. I understood from them they were to pay it to Wherritt.

By same. Did you not understand from Brown or Mozee, that Brandon was indebted to one or both of them, and that Brandon was to get a credit for the amount of the rent that was coming from them?

Answer. No, I did not; I understood Brandon owed both of them, but I do not know how much.

By same. As the written contract for renting the land was made between Wherritt of the one part, and yourself and Brandon of the other part, did not Wherritt rent to you and Brandon jointly?

Answer. The bond for the rent shews that he did.

By same. Did Brandon raise a crop on the ground, or contemplate raising one, at the time you rented the land from Wherritt?

Answer. He calculated to raise a crop if he staid, but he was not certain whether he would stay or not.

By same. Did you cultivate the whole of the ground which was rented by you and Brandon?

Answer. I cultivated some of the fields; I did not cultivate the woods.

By same. Does not the obligation given by yourself and Brandon to Wherritt, for the rent of the land, and which you now hold in your hand, bind you to pay 78½ cents per acre, for the rent of the part which you and Brandon rented from some time in Feb'y, 1843, [to] the 1st of March, 1844?

Answer. If there is 150 acres, it amounts to 78½ cents an acre; but the land has never been measured to us; I suppose there is not so much; if the land falls short of that quantity, the rent will be more than 78½ cents per acre.

By same. If the land falls short of 150 acres, are you bound to pay the same amount of rent as you would have to pay for 150 acres, at 78½ cents an acre?

Answer. We are just to pay in proportion to what we have; it will amount to more per acre, if the land falls short of that quantity.

By same. Does the written contract which you hold in your hand state that you are to pay rent in proportion to the quantity of land, or does it state that you are to pay 78½ cents an acre for the land contained within a certain boundary, supposed to contain 150 acres?

Answer. The contract supposes 150 acres, and if there is 150 acres, the rent will amount to 78½ cents per acre; and if not so much land, it will be more per acre.

By same. Has not the complainant now got the written obligation in his possession, which was given by you and Brandon for the rent; and does he not now refuse to let one have the use of it in presence of the commissioner for the purpose of framing interrogatories?

Answer. He has it in his possession, and refuses to permit you to use it for the purpose of framing questions; stating, as a reason, that it was a private paper, and that he was not bound to let you have the use of it; and further stated, that you had had it a sufficient length of time, and looked over and over it; and I handed it to you several times myself.

At this stage of the proceedings, there not being time to complete the examination on this day, it was agreed to adjourn until to-morrow morning, at 9 o'clock, to meet at the same place.

WEDNESDAY MORNING, 9 *o'clock, Feb'y* 14, 1844.

Met pursuant to adjournment, and renewed the examination of James Frazee, as follows:

Question by counsel of John L. Shawhan. Is the paper herewith filed, dated the 15th Feb'y, 1843, with your name and the name of Benjamin Brandon signed thereto, and marked with the letter A, a copy of the obligation which was given by yourself and Brandon to Wherritt for the rent of the land which you rented from him?

Answer. It is a correct copy.

By same. What portion of said land was arable land; what portion wood land; and what portion meadow?

Answer. I cultivated about 50 acres in corn; there was about 25 acres of meadow; 10 acres was put in hemp; there was about 30 acres composed of lanes and wood land, but not set in grass, and of little or no value; there were also 3 stable lots, containing some 3 or 4 acres; and also a part of a branch included in the land so rented, the branch supposed to contain about two acres.

By same. Did you cultivate all the arable land yourself, or did any other person cultivate a part of it?

Answer. I cultivated a part of it myself, and let others cultivate a part on the shares; Elliot Roberts cultivated about 10 acres in hemp, and was to give me 150 pounds of hemp to the acre, but owing to the failure of the crop, I have agreed to take 100 pounds per acre; he also cultivated about 20 acres of corn, for which he was to give me one-half the crop; I rented to McGibbon about 12 acres of wood land, at $1 00 an acre, and about 10 acres of the arable at $2 00 an acre; that part of the wood land rented to McGibbon was the best grass land of all the wood land on the place; and the corn land rented to him was over an average of the corn land on the farm; about ten acres of the meadow was not worth cutting, and was not mowed at all.

By same. When you rented to Francis Brown the balance of your term, did you rent to him that part of the land which was cultivated by Elliot Roberts, and that which you rented to McGibbon?

Answer. I only rented to him that part of the land which I had in my own possession; but not that part which was in the possession of McGibbon & Roberts.

By same. What did Francis Brown give you for the balance of your term, and your crop?

Answer. He agreed to give me $7½ an acre for about 40 acres of the corn, to be paid in whiskey; and I was to give him all the possession that I had on the farm; the whiskey to be paid during the present winter and spring, at 20 cents a gallon for copper whiskey; and if he pays me in steam whiskey, it is to be at cash price.

By same. Was Brown to give you any thing more than what you had mentioned for your crop, and the balance of your term?

Answer. No.

By same. Has Brown paid you any part of the price of the crop, and the balance of the term which you sold him?

Answer. I have not received any part yet; but he told me yesterday that a part of the whiskey was ready.

By same. Was there any written contract between yourself and Brown when you rented the balance of your term to him?

Answer. I assigned the contract between Wherritt and myself to Brown by a written assignment.

By same. Was Brandon consulted when you made said assignment to Brown, or did Brandon assent in any way to the assignment?

Answer. No; Brandon knew nothing about it.

By same. What authority had you to assign the contract in which Brandon was equally interested with yourself?

Answer. Brandon was not interested after he relinquished his right to me; when Brandon was about to go away, he relinquished his right to me, and I agreed to pay all the rent.

By same. Did Brandon make a written relinquishment to you of his right in said land?

Answer. No, I think not; I do not recollect that he did.

By same. Where did Brandon keep the groceries and cotton yarn, which you have spoken of in your deposition?

Answer. He kept them for a while in a house near the mill; when I got the last that I got from him, he kept them up stairs in his own house.

By same. When did you get the last groceries that you got from Brandon?

Answer. I don't recollect; I got my groceries from him for about three years, but do not recollect when I got the last.

By same. Do you know that Brandon kept any groceries or cotton yarn for sale during the years 1841 or 1842?

Answer. He kept groceries in 1841, but I cannot say what time of the year; but I do not recollect that he kept any in 1842; I did not deal with him in that year; I got a barrel of sugar and a sack of coffee from him on Christmas day, 1841; and have got other groceries, and other articles, since that time, such as spun cotton, cigars, spices of different kinds, rice, shot, loaf sugar, and tea; but at what particular times since Christmas, 1841, I do not recollect.

By same. Do you know Marmaduke Moore, late deputy sheriff of Harrison county; and has he not removed from the State?

Answer. I was acquainted with said Moore, and I have understood he has removed to the State of Ohio; and I have not seen him since the time that I understood that he had removed.

By same. Is there a good dwelling house on the land you rented from Wherritt; and did you reside on the land and occupy the house until you sold out the balance of your term to Brown?

Answer. There is a good house on the land; I resided there until I sold out to Brown.

By same. Did Brandon owe you any thing when you rented the land from Withers, or does he, said Brandon, owe you any thing at this time?

Answer. He did not owe me any thing at that time, nor does he owe me any thing at this time.

By same. Did you bind yourself to give Francis Brown possession of that part of the ground which you rented to Elliot Roberts or McGibbon, or is said Brown entitled to the possession thereof under his contract with you?

Answer. He never asked me for the possession of that part, and I only gave him possession of what I had at that time; Brown told me he wished to live in the house, and if he could get to live there a few years, perhaps he might make up for some of the losses which he had sustained.

Question by Perry Wherritt. Did I not tell you and Judge Trimble, the counsel for the defendants, while he had the bond between you and

myself, examining it, that I would furnish a copy to be filed with the depositions in this case?

Answer. You did.

Question by same. Was it not understood between you and Brandon, when you rented from me, that said Brandon expected to leave the country soon, if his family were well enough; and, in case he did move, you were to take and pay for all the land named in the bounds contained in the bond from you and Brandon to me?

Ans. His sons were both sick at the time of renting, and he could not get away; being determined to move, he left one of his sons at my house, and he staid there for some time.

And further saith not, JAMES FRAIZER.

The following is the paper referred to in the foregoing deposition, and marked A:

This instrument of writing, executed on the 15th day of February, 1843, by James Fraizer and Benjamin Brandon, to Perry Wherrit, witnesseth:

That whereas, by a decree of the United States court, in bankruptcy, on the petition of John Lail and others, said Brandon has been declared a bankrupt, Wherritt appointed assignee, and as such taken possession of 350 acres of land, being the farm on which Brandon now resides; and whereas Wherritt has this day rented to said Brandon and Fraizer all that portion of said farm contained in the following bounds, beginning at the upper end of said farm and including the dwelling house, and running down with Thomas Wornal's line, so as to include one 20 acre field below Thomas Wornal and along the fence, the upper side of the house where McGibbon now lives, to the big birduck and up the branch, including one half the branch, to John L. Shawhan's line, supposed to contain about 150 acres, be the same more or less; for which land we jointly and severally promise to pay, on the 1st day of March, 1844, to Wherritt, the sum of 78½ per acre, for the rent of said land from this time until the 1st day of March, 1844; at which last mentioned time we promise to deliver up to Wherritt the full, quiet and peacable possession of said land, to keep the houses and fencing, and building in usual good repair, unavoidable accidents excepted, and not to waste or destroy the timber of fencing or improvements on the land, except so far as is necessary to keep the place in repair. The quantity of land, if not agreed on between Wherritt and us, is to be ascertained at our cost; should we be dispossessed of this place by any adverse better claim during our term, Wherritt is to give up our contract.

In testimony of which we set our hands and seals this 15th Feb., 1843.

JAMES FRAIZER, [SEAL.]
BENJ. BRANDON. [SEAL.]

At this stage of the proceedings, there not being any other witness in attendance, and not being able to complete the examination on this day, the matter was adjourned over until to-morrow morning at 9 o'clock, at the same place.

Thursday morning, 9 *o'clock*, *Feb.* 15, 1844.

Met pursuant to adjournment, and resumed the examination, as follows:

J. B. Bassett, of lawful age, and first duly sworn, deposeth and saith. to—

Ques. 1, by P. Wherritt. Did or did not John L. Shawhan state to you that he was well satisfied with the deed of trust made by Brandon to Withers? If so, state what that conversation was, and when it took place, and all about it.

Ans. John L. Shawhan and myself were in company the night that the deed of trust was executed to Withers by Brandon, and we were in conversation on the subject; Shawhan told me that he had come to town, and intended to die on the ground, but that he would know what was being done; that Brandon was going to execute the deed that night to Withers, and he was determined to attend to it; I had several conversations with him afterwards, and before his attachment was levied on Brandon's property, in which last named conversation he expressed himself well satisfied with the deed of trust; and further said, that so long as they were willing to carry out the terms and principles laid down in Brandon's printed advertisement of the sale of his property, that he (Shawhan) would be satisfied; the first conversation with Shawhan I had, was after dark on the night the deed of trust was executed; the first conversation I had with Shawhan after the deed of trust was executed, I think was on the next day, and early in the day; in the course of that conversation, I asked him if he was sure the deed of trust was made on the terms, and contained the principles, that he had stated to me; he said he was sure, for he had heard it read.

Ques. by John L. Shawhan's counsel. Did Benjamin Brandon owe you any thing when the deed of trust was executed by said Brandon to Withers, or does he owe you any thing at this time?

Ans. He did not owe me a cent then, and does not owe me a cent now. J. V. BASSETT.

Joseph Patterson, of lawful age, and first duly sworn, deposeth and saith.

Ques. by Perry Wherritt. Do you know Benjamin Brandon, of late of Harrison county; how long you knew him, and what his occupation was for two years before the 22nd day of November, 1842, and particularly at and before the 6th day of April, 1842, running back for six months from that time.

Ans. I have known Benjamin Brandon for 30 years past, after 6th day of April, 1842, up till the 22nd of Nov., 1842; I cannot say certainly what his business was for two years previous to the 6th day of April, 1842; he was grinding and distilling whiskey.

By same. Did he not also use and exercise the trade and occupation of a merchant, grocer, or factor, by buying and selling goods, wares, merchandize, groceries, &c., &c., and of buying and selling horses, cattle, &c., in Kentucky, and by droving to Southern or other markets?

Ans. I believe he did; I bought of him myself, such as sugar, coffee, cotton yarns, cotton cloth, raisins, wines, tobacco, &c., and many other articles; he bought cattle, and I purchased of him myself; and he bought horses, and sent them to the South, for some 3 or 4 years in succession, to the best of my recollection.

By same. About what years was he engaged in this trade above named?

Ans. I think at the time Brandon was a representative of the county of Harrison in the legislature; I saw his son in Frankfort, which was, I think, the session of '34–'5, or '35 and '6; he came to me and stated he had just returned from the South, where he had drove a lot of mules, and mostly horses; his father, Ben. Brandon, told concerning the prices, and he had made money on the drove, as he sold at good prices; this is the first time I have distinct recollection of his driving stock South, though I think he drove before.

By same. How long did he keep up such trade, and when did he stop driving?

Ans. For years in succession, to the best of my recollection; I think he had a lot of horses in the steam mill lot, after they commenced the steam mill, or commenced operations in it; I think it was in the fall of 1840 or 1841.

By same. Did he or not keep up such trade, and keep on hand a general assortment of groceries, up to the time of his failure?

Ans. He had groceries; I got coffee, I think, the next morning after he made the deed of trust, from his son, being the agent.

By same. Was said Brandon a resident of Harrison county all the time you knew him?

Ans. He was a resident of Harrison county, and State of Kentucky, from 1812 to the time he left the county, which was in 1843.

By same. Was it not generally believed and understood that said Brandon was broke, insolvent, and unable to pay his debts, for some time before the said 22d of November, 1842?

Ans. I think it was so understood after the day on which his property was to have been sold by the trustee.

By same. How long was that intended sale before the 22d Nov'r, 1842?

Ans. I think it was in May preceding, perhaps the 22d; do not recollect the day.

By same. Do you not know that said Brandon was sued for large sums of money, by divers persons, at and before the said 22 Nov'r, 1842, stating by whom, and for what amount, and in what courts?

Ans. I know only from report; I think Brandon told me that Nesbitt and Mozee sued him, and I understood that John O. Hodges and Walden also sued him; I understood he was sued for large sums of money; the suits were brought at the June term of the Harrison circuit court, 1842. John O. Hodges had a writ served on him for an assigned note prior to March court, 1842, and Brandon came in and made an arrangement with him, by giving John Douglass as additional security.

By same. Did said Brandon, at one or more times, avoid the service of process on him? If so, state the time or times, and the process avoided, and how avoided.

Ans. I believe he did avoid the service of an attachment on him by Nesbitt and Mozee, under the impression it was for his body; I know of no other avoiding.

By same. Do you know that said Brandon knew of his insolvent condition and inability to pay his debts when he made the deed of trust to Withers?

Ans. I never heard him speak of insolvency; I heard him say that, if the sale had not been suspended, he would have paid all his debts; though I thought strangely of it.

By same. Did said Brandon convey all his property and rights of property, and to all his creditors, by that deed of trust?

Ans. As far as I know he did.

Quest. by same. Did the trustee, Withers, know of the insolvent condition of Withers when the deed of trust was made?

Ans. I do not know that he did.

By same. Did he know the character of business he, said Brandon, followed; his buying and selling goods, wares, and merchandize; his buying and selling horses in Kentucky and in the South?

Ans. I presume he must have known it.

By same. Where did Withers, the trustee of Brandon, live; how far from said Brandon's; how far from the court house where any suits had been brought against him, said Brandon?

Ans. Withers, the trustee of Brandon, lived in Cynthiana, about 25 to 40 yards from the court house where said suits were brought, and about 5 or 6 miles from Brandon's.

By same. Do you know of any property that was not conveyed in the deed of trust from Brandon to Withers?

Ans. I do not.

By same. Do you know of any creditor left out of said deed of trust?

Ans. I do not; have not heard of any.

By same. Where does John L. Shawhan live; also, Daniel Shawhan and Benjamin Berry; how far from Brandon's; and did live in 1841 and 1842?

Ans. John L. Shawhan lives $\frac{1}{2}$ or $\frac{3}{4}$ of a mile from Brandon's; Dan'l Shawhan lives some 4 or 5 miles off, and Berry some 3 or $3\frac{1}{2}$, both in Bourbon county, and did live there in 1841 and 1842.

By same. Had they not a good opportunity of knowing all about his business arrangements?

Ans. I think so.

Whether the complainant, Perry Wherrit, was or not in possession of the land which had belonged to Brandon, in Harrison county, before there was any decree to sell the same? If so, state when Perry Wherritt obtained possession.

Ans. I do not know.

By same. At what time do you know that Perry Wherritt came in possession of the land?

Ans. I presume that it was at the time he rented from said Wherritt; I think it was in January, 1843.

By same. Under the circumstances and claims, what could Wherritt, the assignee, probably obtain for the land?

Ans. I think I would not want to buy, nor do I know any person that would, under the circumstances.

By same. What rent was enough for the land at the time I rented to Brandon and Fraizer, under the circumstances?

Ans. I say, from 75 to $1 00, in my opinion.

By same. State, if you know, how and why the deed of trust was made by Brandon to Withers of all his property, except what the law allows him; state, if you know, whether the person or persons named in that deed were present when the same was made, or had knowledge thereof till afterwards.

Ans. I only know from Brandon's statements to me the reasons why, which was with the view of doing impartial justice to all his creditors; he stated that Nesbit and Mozee, and others, were making inroads on him, and that he wished to stop it by making said deed, that all might be made and have an equal portion in proportion to their claims; not being present when the deed was made, I know not who was present.

By same. Did you ever hear of any creditor named in said deed of trust express *themselves* satisfied with its provisions, particularly John L. Shawhan, Daniel Shawhan, or Benjamin Berry?

Ans. I was not very conversant with creditors, they being scattered far and wide; in a conversation with John L. Shawhan, I asked him if he was pleased with the deed of trust, as I had understood he was; his reply was, you never heard that I was pleased that Withers was appointed trustee; and said that some of the large creditors ought to have been preferred.

By same. Do you know how much money Brandon owed John Lail, at the time the deed of trust was made?

Answer. I do not, other than his liabilities in bank; some time in the summer, 1841, Brandon came to me with a note to recommend; the endorsers were John L. Shawhan, John Lail, and William Gray; the amount of the note was $800, or thereabouts; I wrote to R. L. Todd, telling him the note was good, and Brandon told me he drew the money; after Brandon broke, I met Lail, and he said to me he had received a bank notice, which he showed me, and said he believed they would break him up.

Question by John L. Shawhan's counsel. Do you know of Benjamin Brandon's buying up horses or mules, and sending them to a foreign market, at any time in the year 1841, or since?

Answer. I do not; his son Cincinnatus went with stock in the year 1841, and I understood that John L. Shawan had had an interest in the stock, but I do not know that Benjamin Brandon had any.

By same. Where is Cincinnatus Brandon at this time?

Answer. He left Harrison county about 3 weeks ago; I have understood he has resided for some time in the State of Indiana; he removed from this State some time last spring, and has not been a resident of this State since that time, that I know of.

By same. Do you know of Benjamin Brandon keeping groceries or spun cotton for sale, in the year 1841, or since?

Answer. He sold groceries up to the time he made the deed of trust.

By same. Where did Brandon keep his groceries that he kept for sale?

Answer. When I dealt with him he kept them up stairs in his own house; I understood he had, before that time, kept them in a small house near the mill, but I never saw them there.

By same. Did John Lail file his petition in bankruptcy against Brandon with Brandon's knowledge or consent, or was Brandon consulted on the subject previous to the filing of the petition?

Answer. I do not know.

By same. Did you ever hear John Lail or Benjamin Brandon say any thing on that subject?

Answer. Brandon always *so* expressed himself opposed to it in my presence; I never heard Lail say any thing on the subject.

By same. Do you know who were Lail's securities, in his bond as petitioner in bankruptcy?

Answer. I do not.

By same. Did Brandon owe you any thing at the time the deed of trust was made, or does he owe you any thing at this time?

Answer. At the time the deed of trust was made, Brandon owed me a small sum for rye I sold him, which was to have been paid in spun cotton; after the deed of trust [was] made, Cincinnatus Brandon, as the agent of the trustee, paid me up in whiskey and some coffee; at the sale of Brandon's property, under the decree of the Bourbon circuit court, I bought to the amount of about $30, at the request of Brandon, for the use of his wife and children, and gave my own note for that, and the price of some other articles which I purchased; I afterwards paid the purchase money, and when Brandon sold the property which the law exempted from execution, his son refunded the money to me which I paid for the property that I purchased at Brandon's request, and now he owes me nothing.

By same. Do you know any thing of Brown and Mozee renting any part of the Brandon farm, and at what time?

Answer. I do not.

By same. Did Brandon ever inform you that he had rented a part of the farm to Brown and Mozee, or to McGibbon?

Answer. He did not tell me any thing about renting to Brown or Mozee; as to McGibbon, I cannot say whether he did or did not.

By same. Did Brandon ever inform you that Brown and Mozee were to hold a part of the farm, or the whole of it, until they were paid what he owed them?

Answer. I have heard that Mozee was to hold the house he lived

in, and some of the ground, until he was paid what Brandon owed him; but I did not hear Brandon say any thing on the subject, nor do I at this time recollect who I heard it from; what I heard on the subject was before Brandon failed, and not since that time.

Question by Wherritt. What was the land and other property worth at the time the deed of trust was made to Withers?

Answer. I think the land and all the improvements, together with the steam mill, was worth about $50 per acre; as to the negroes, and personal property, I cannot tell what *it* was worth.

By same. Did Brandon become indebted to you after the deed of trust, and after the commissioner under the decree of the Bourbon circuit court had set apart to him what the law allowed him, or was it a debt contracted before the deed of trust was made, that his son paid you on the purchase of the property at the sale?

Answer. It was a debt contracted after the commissioner set apart the allowance for the purchase of property by me at the sale, and given to Mrs. Brandon, which Brandon's son paid me for long after making the deed of trust.

Question by John L. Shawhan's counsel. Were you present when Wm. A. Withers commenced selling the trust property under the deed of trust made to him by Brandon?

Ans. I was.

By same. Did or not Withers, or the crier of the sale, proclaim that the whole of the property was to be sold?

Ans. The sale commenced, and the crier proceeded to sell, until the sale was stopped by an injunction, which issued on a bill filed by John L. Shawhan and others against Brandon & Withers, in the Harrison circuit court; and the advertisement of the sale stated that the whole of the property was to be sold, as well as I recollect.

By same. Was John Lail present at that sale, and did he object to it?

Ans. He was at Brandon's on that day, but whether present while the sale was going on or not, I do not recollect; I did not hear him object to the sale.

By same. Was John Lail present, and a bidder at the sale of the Brandon farm, when it was sold under the decree of the Bourbon circuit court?

Ans. I was not at that sale, and do not know.

And further this deponent saith not.

JOSEPH PATTERSON.

James R. Curry, of lawful age, was called on the part of Wherritt, the complainant, and first duly sworn, deposeth and saith, in answer to

Question by Wherritt. Did you write the deed of trust from Brandon to Withers? If so, state whether John L. Shawhan was there at the time of the execution of the deed; whether or not he heard it read, and expressed himself satisfied with the terms and principles of said deed of trust; state all you know on this point of the subject.

Ans. I did write the deed of trust from Brandon to Withers, and John L. Shawhan was present while I was writing the deed, and I suppose he knew what I was doing; and after the deed was written, and executed by Brandon, he expressed himself satisfied with its terms. On the evening of the day on which the deed bears date, William A. Withers came to my office, and informed me that Brandon intended to execute a deed of trust to him for the benefit of all his creditors, except two of them, who it was said had taken attachments against his estate, and requested me to draw the deed; not long afterwards John L. Shawhan came to my office, and I informed him of what I had been requested to do by Withers; he remained, I think, but a short time, and I drew the deed of trust, as requested; some time after dark, Brandon and some others came into the office, and the deed of trust being read to Brandon, he objected to the deed, because the two creditors above named were excluded from the benefit of its provisions, and I immediately proceeded to draw another deed of trust, similar to the first, except that it did not exclude any of Brandon's creditors from its benefits; and whilst I was drawing the second deed of trust, the one which was executed by Brandon, John L. Shawhan was some time in my office, sitting near me, but I did not notice him when he came in, or when the deed was executed; he may or may not at that time have been present; but if he was not present when the deed was signed and acknowledged by Brandon, he came in immediately afterwards, for in a very short time after the deed was executed, Brandon, Withers, and others, left the office, and at the door John L. Shawhan asked me to remain, and I returned with him to the table, and, at his request, recapitulated the terms of the deed, as near as I could remember them, and he then expressed himself satisfied, and we left the office together.

By same. Did you, or not, survey the tract of land conveyed by Brandon in that deed of trust to Withers? If so, state how many acres it contained, and what you believe the land to be worth per acre.

Ans. I have heretofore surveyed the land more than once, but do not remember the precise quantity, but I think it contains somewhere about 350 acres. The land, with the improvements on it, ought, on the usual terms on which land is sold, say one-third in hand and the balance in one and two years, to be worth $30 or $33⅓ an acre. Value is a matter of opinion, but I think that tract of land is worth what I have stated above.

Quest. by John L. Shawhan's counsel. What time of evening was it that John L. Shawhan first came to your office, on the evening that the deed of trust was drawn from Brandon to Withers?

Answer. I think it was late in the evening, probably near sundown.

By same. Did you remain in your office after John L. Shawhan left, or did you go home, and then return and finish the deed of trust?

Answer. After John L. Shawhan was first at my office, I think I went to supper and returned; I now speak as to the best of my recollection.

By same. Did you leave John L. Shawhan at your office when you went to supper, or did he go away before you did?

Answer. I think I did not.

By same. When you went to supper did you not lock your office, and John L. Shawhan go away and leave the office?

Answer. I have not now a distinct recollection on the subject; I cannot say positively that I went to supper after he was there the first time; I, however, think he was there before supper time, and it was my habit to lock my office when I left it. I think Shawhan left my office after he was there the first time before Brandon came.

By same. Was or not Major Kinsbrough in your office, when John L. Shawhan came there before supper, on the evening that the deed of trust was made?

Ans. I am unable to say; I think Kinsbrough and Nathan Stuart were both there the same evening; but whether they were all there at the same time, or whether any two of them were there at the same time, I have no recollection.

By same. Were you writing the rough draft of the deed of trust while Kinsbrough was in your office; and did not John L. Shawhan and Kinsbrough go away together?

Ans. I at this time have no distinct recollection of what I was doing when Kinsbrough was in the office, or at what particular time he was there, or when, or with whom he left; but I think that I was either drawing the rough draft or the first deed, probably the rough draft of the deed of trust, when Shawhan first came there; and although I think he remained but a short time, I do not now remember what I was doing when he left, but suppose, when he left, I was drawing the rough draft, or the deed of trust.

By same. Did you inform Maj. Kinsbrough of the purport of the deed of trust you were drawing, or read the rough draft, or any part thereof to him, or in his presence?

Ans. If I did I have forgotten it; if he made any inquiry on the subject, I either read, or informed him of what I was doing, but at this time I do not remember any conversation had that evening with Maj. Kinsbrough, and only infer that the conversation with him was in relation to Brandon's affairs, from the fact that they, about that time, at least on that evening, were the general subject of conversation in my office.

By same. Was there any person in your office when you returned from supper?

Ans. I have already said that I did not now remember whether I went to supper.

By same. When John L. Shawhan came to your office, the first time, on the evening the deed of trust was executed, did you remain there and continue writing the deed, or did you go away and afterwards return?

Ans. My present impression is, that after Shawhan left my office, I went to supper, but my recollection is not sufficiently distinct to enable me to say whether I did or not. If I did not leave my office to go to

supper, I do not remember to have left it for any other purpose until after the deed was executed by Brandon; but I may, for some purpose, have left my office for a short time.

By same. Who came first to your office on that evening, after John L. Shawhan left it?

Answer. I do not now think that Shawhan, the first time he came to my office, remained long, but do not remember who came in first; after he left it there were a number of persons passing in and out, but in what order they came in, or passed out, I am unable to say; my attention was principally occupied in drawing the deed, and if I ever noticed the order or succession in which they entered or left my office, it did not make sufficient impression on my mind to enable me to remember it at this time.

By same. Was John L. Shawhan in your office on that evening, from the time that he left there the first time, until after Wm. A. Withers and Thos. B. Woodyard came there?

Ans. After Shawhan left my office the first time, I do not remember to [have] noticed him there again, until I was drawing the second deed of trust, at which time Withers and Woodyard were there.

By same. Were Benjamin Brandon, and his son Cincinnatus Brandon, in your office while you were writing the second deed of trust?

Ans. They were.

By same. After the second deed of trust was finished, was it read in the presence of Thomas B. Woodyard, clerk of the Harrison county court, and then acknowledged before him by Benjamin Brandon?

Answer. I have no distinct recollection whether the second deed was read in the hearing of Woodyard or not; the first deed I think was read in his presence, because I think *I think* I remember of Woodyard's suggesting the propriety of drawing a deed making equal provisions for all his creditors; but whilst the second deed was drawing, Woodyard was leaning with his head on my table asleep, and I do not remember whether the deed was read over after he was waked up, or before.

By same. Is the second deed of trust which you wrote that which was acknowledged before Woodyard as clerk of the Harrison county [court,] and afterwards recorded.

Ans. I think so; I drew but two deeds, and the first was neither signed nor acknowledged.

By same. Was John L. Shawhan present when the first deed which you drew was read in the presence of Woodyard?

Answer. He may or may not then have been present, but I don't remember to have seen him in the office at that time, nor do I distinctly remember to have seen Shawhan in the office, after he left it the first time, until I noticed him sitting near me by the stove, which I think was whilst I was drawing the second deed.

By same. Was John L. Shawhan present when the second deed of trust was acknowledged by Brandon before Thomas B. Woodyard?

Ans. I did not notice who were present when the second deed of

trust was acknowledged, nor do I remember to have particularly noticed him at that time, or until we were leaving the office.

By same. When the first deed of trust was read, did Brandon object to it, which induced you to write the second deed?

Ans. I think Brandon objected to executing the first deed, because, as he said, he did not wish those creditors who had instituted proceeding against him to be excluded from its benefits.

By same. After the second deed of trust was drawn, was it read in the presence of Benjamin Brandon and Wm. A. Withers, and approved by them before it was acknowledged by Brandon before Woodyard?

Ans. I think it was.

By same. If the second deed of trust was read in the presence of Brandon and Withers before it was acknowledged, was Woodyard or John L. Shawhan present when it was read?

Answer. I have already said that I did not notice whether Shawhan was in the office when the deed was read or not; and I have also stated that Woodyard was in the office, but that I did not remember whether he was waked up before or after the deed was read.

By same. Was Benjamin Brandon, Cincinnatus Brandon, and Wm. A. Withers in your office, while you were writing the second deed of trust?

Ans. I think they were, at least a part of the time, and probably some others.

By same. Who came to your office with Benjamin Brandon on that evening?

Answer. I cannot speak with certainty who came with him; about the time he came in, his son Cincinnatus, Will. Snodgrass, and probably others, I think Shawhan, came to the office soon after Brandon, though I cannot speak positively when he came in.

By same. Did you see John L. Shawhan when he came into your office the second time?

Ans. I do not now remember whether I saw him at the time he was going into the office; but I saw him after he went in.

By same. Was any person present when you had the conversation with John L. Shawhan in your office, respecting the deed of trust after it was acknowledged before Woodyard as clerk of the county court?

Ans. I have already made a statement in this deposition in relation to the matter.

By same. Was your affidavit taken on the part of the defendants, in a suit in chancery, formerly depending in the Harrison circuit court, in which John L. Shawhan, and others, were complainants, and Benjamin Brandon and Wm. A. Withers were defendants; and which was afterwards removed to the Bourbon circuit court, by change of venue?

Ans. My affidavit was taken in that case, and I think by the defendants; but at this time I cannot speak positively. You say you have a copy, and it will shew for itself. My impression is, that my affidavit was taken by the defendants.

By same. Were you counsel for the defendants, Brandon and Withers in that case, and did you draw their answer?

Answer. I drew their answer, and was counsel for them in the com-[mence]ment of the case; but when my affidavit was taken I quit the case, and Maj. Wall was then the only counsel, until M. O. Smith was employed. On the hearing of the cause, Maj. Wall was not present, and at the request of Withers, I assisted in arguing the case, merely as representing Maj. Wall. I never received or charged any fee in the case, and was only employed as above stated.

By same. Did Maj. Wall ever request you to represent him on the trial of the case in the Bourbon circuit court?

Answer. I do not remember whether he did or not; my impression is that he did not. He was then prosecuting attorney in this district, and was attending some of the courts in the lower end of the circuit, and I had left Paris on the day on which it was expected the case would be heard, and about one-half an mile on my way home, was met by Brandon with a letter from Withers, informing me that Wall had not returned, and would not be at the trial, and requesting me to attend to the trial with Will. O. Smith, who had been employed.

By same. Was Maj. Wall counsel for the defendants in that suit after it was removed to the Bourbon circuit court, or did he ever agree to follow it, or attend to it in that court?

Answer. I understood that he was; and, if I am not mistaken, he had the trial of the case deferred in the Bourbon court to a time at which he thought he could attend the trial; I may not have received this impression from any thing Maj. Wall said himself, but think he conversed with me on the subject before he went to Boon court.

By same. Have you got the letter which Withers wrote to you, requesting you to assist in the argument of the case in the Bourbon circuit court?

Ans. I have been with Doct. Hodges to my office, and found the letter. Here it is; you can examine it, and make it part of this deposition if you choose.

By same. Is not the following a copy of the letter which Withers sent you by Brandon, to wit:

CYNTHIANA, *October* 18, 1842.

DR. SIR: On my arrival at home, I find Maj. Wall has left home, and cannot possibly attend to our case in Paris, and you must do it without fail. Your excuse in the present case I know, and have duly considered all things connected with it, and cannot, for the soul of me, see why you should not do your duty to yourself and friends, who have all confidence in you. As to the evidence you gave, you know, and so do all who have any thing to do with the case, is true, and you should not be deterred from doing your duty for fear of remarks by that old *Deamon*. We are left in a helpless condition, when my interest is deeply at stake, and no one but yourself understands the matter, or can do me justice. I yielded to your squeamishness as long as I could get our interest defended by any one; but now I am left helpless, and no one to see me justice

done. And you, as a friend, I depended on, will let me suffer, lest you may be suspicioned for doing wrong. Were you in my condition, I would brave the scoffs of the whole world, sooner than see you suffer. I would not suffer myself [to be] deterred by any thing that Judge Trimble might say or think in this matter, but sustain your friends as far as right. In the name of all that is sacred, I implore you to attend to this matter for me. Yours,

WM. A. WITHERS.

Answer. The foregoing is a correct copy.

By same. Do you not know that Major Wall does not attend the Bourbon circuit court as a practising lawyer, except in cases where he is specially employed?

Answer. I do, and understood that he was specially employed in that case.

By same. Did you draw the petition in bankruptcy, which was filed by John Lail against Benjamin Brandon, in the district court of the United States for the Kentucky district?

Answer. I did.

By same. Did Brandon or Withers ever consult you on the subject of drawing or filing that petition, or any other petition in bankruptcy, either for or against Brandon?

Answer. I have no recollection that either of them ever did. I was employed by Nathan Steward, John Lail, and others.

By same. Did John Lail or Nathan Stewart inform you that Brandon wished a petition in bankruptcy to be filed against him?

Answer. No, I think not.

By same. Have you not been informed by some person that Brandon or Withers wished a petition in bankruptcy to be filed against Brandon?

Answer. If such information has been given to me, it must have been by Withers or Brandon themselves; and since the petition was filed, I think I have heard Brandon say, he would be glad if the property should be *disturbed* under the bankrupt law; and have probably heard Withers talking on the subject, and may have heard him say, that it would be more equitable to distribute the property under the provisions of the bankrupt law; but neither of them, to the best of my recollection, ever consulted me on the subject; the subject of this proceeding I have often heard mentioned, and I may and probably have heard many things said about it which I have forgotten.

By same. Did the complainant, Wherritt, consult you on the subject of taking possession of the Brandon farm under the decree in bankruptcy?

Answer. I am not positive, but think it very probable he did; Mr. Wherritt has generally consulted me about his duties as assignee.

By same. Did you draw the instrument of writing, executed by Brandon to Wherritt, when he leased the farm to Brandon in 1843?

Answer. I *have*, may have done so, but have no recollection now

hat I did, Mr. Wherritt who is present says, that I drew a short writing between them.

By same. Did not the complainant, Wherritt, act under your instructions in the commencing this suit, and in the management thereof?

Answer. Wherritt, when about to commence this proceedings, may have asked my opinion on the subject, and I think he did; but he prosecuted the suit as I think pursuant to the advice of Lindsey & Cates, of Frankfort. I have been Mr. Wherritt's counsel in the general discharge as assignee, but in this case I am not his counsel in the management of the case, either here or in Frankfort; he applied to me to attend to taking these depositions, which is all the employment which has been offered to me in the case, and that I declined.

By same. After Withers's deposition was taken in this case, did not the complainant take it to your office for your examination, and did you not examine it there?

Answer. If he brought the deposition to my office, I did not see it, and never heard of such a thing until you asked me the question; if however he had asked me any question about the deposition, I would most cheerfully have given it, and would consider the person a great villain who would infer from that circumstance that I would thereby be influenced to state any untruth in my deposition.

By same. At the last fall term of the Bourbon circuit court, did you or not appear as counsel for the defendants in the suit in chancery in that court, in which John L. Shawhan, &c., were complainants, and Benjamin Brandon and William A. Withers were defendants, and ask for a continuance of the cause for the purpose of enabling you to file exceptions to the commissioner's report in the case, and did you not obtain a continuance of the cause on that ground?

Answer. I did.

By same. Were you counsel for the defendants in the cause at that time?

Answer. I understood that Withers had ordered a copy of the record to take the case to the court of appeals, and that you had withdrawn the commissioner's report, and fraudulently *witheld* it to prevent the clerk from making out a complete record; and at the request of either Wherritt or Withers, I do not now remember which, I asked for a rule on you to return the report, and for a continuance of the cause to give time to take exceptions to the second report.

By same. Who informed you that I had fraudulently *witheld* the commissioner's report?

Answer. I was informed so by Withers; the clerk, J. M. Arnold, wrote down for the report to make out the record, and I understood, I think, from Woodyard or Wherritt, that they called on you for the report, and that you refused to give it up.

By same. Was I not out of the court house when that rule was obtained, and did I not appear to the rule, and *hauve* it discharged before you made the motion for the continuance?

Answer. I think you were in the court house, but do not remember; you now say, Smith obtained the rule, and he may have done so; I paid but little attention to the case, except to obtain the continuance; and I think the rule was discharged on your promising to file the report during the term; the only question that made any impression on my mind, at the time, I understood Smith to say you had taken the report without an order of the court, and on examination I think an order was found allowing you to withdraw the report; and from what I had heard I inferred or was told, I don't now remember which, that you had, without the leave of the court, withdrawn the report, and finding that order, I paid but little more attention to the case.

By same. Were you present when that rule was obtained, and was it made on your motion?

Answer. I do not remember; I was present when the subject was mentioned, and thought that the rule was obtained on my motion; but you say that the rule was made on the motion of William O. Smith, and if that was the fact, I was only present when you asked to have the rule discharged.

By same. Did I make any opposition to the rule when it was asked for?

Answer. You say it was asked for by W. O. Smith; and if in that statement you tell the truth, I was not present.

By same. When I stated that the rule was made on the motion of Smith, did I not state, at the same time, that I was not present when the motion was made, and had no opportunity of opposing it?

Answer. You did say so; but I was not present when Smith made the motion, (if he did make it,) and therefore do not know whether you were present or not; you were present the only time I heard the subject mentioned, and my recollection of the occurrence, to which I paid nothing more than a passing attention, is not sufficiently distinct to enable me to say, whether I made the motion or only made some remarks on your application to have the rule discharged, or on my application for a continuance of the cause. If I made the motion, you were present. If I did not make the motion for the rule, I do not know who was present.

By same. Was the motion for the rule made at the fall term of the Bourbon circuit court, in the year 1843?

Ans. It was.

By same. Was it discharged at the same term of that court?

Answer. Yes, I believe so, on your promising to return immediately home and get the report, and file it during the term, which I understand you did.

By same. When that rule was discharged, was not the record examined, and did it not shew that I, as counsel for the complainants in the case of Shawhan, &c., against Brandon, had, at the spring term of said court, in the year 1843, obtained an order to withdraw the commissioner's report, and deliver it to Thomas B. Woodyard, the com-

missioner, to enable him to make a sale of Brandon's property under the decree made at said spring term?

Ans. To save any further interrogatories on this subject, to gratify private feeling, I will state all I now remember on the subject. During last spring Withers sent word by me to Will. O. Smith to have the record made out for the court of appeals; and afterwards I received a communication from James M. Arnold, in the following words:

Maj. J. R. CURRY.

DR. SIR: I cannot finish the record of Shawhan vs. Brandon, as I cannot find the commissioner's report. Do me the kindness to see Judge Trimble, and enquire if he knows any thing of them. I recollect that some of the lawyers took them out to examine them, about the end of the term, but can't recollect who; and I have enquired of the Smiths, who only recollect of seeing them. I will complete the record, and forward it as soon as I can find the reports.

With great respect, yours, &c.,
J. M. ARNOLD.

June 20, 1843.

When I received that letter, I either sent the bearer or some other person, (I thought, Withers, Wherritt, or Woodyard, but they say it was neither of them,) to enquire of you; and they returned and stated that you had the reports, but refused delivering them up; and from the tenor of the letter, I inferred that the report had been withdrawn without an order of court, and intended at the next term to ask for a rule on you to have it returned, and was present when the subject was mentioned, which I think was probably by myself when I asked for a continuance of the cause, without knowing that a rule had been previously obtained. When the subject was mentioned by me, you were present, and the record was searched, and an order found authorizing you to withdraw the report, but do not remember that the rule directed you to deliver the report to Woodyard. You promised to return the report during the term, and finding that I had been mistaken in the inference which I had drawn from Arnold's letter, I gave no further attention to the subject I was, at the time the subject was mentioned, about to leave Paris, and did leave the same evening, but understood that you filed the report during the term.

By same. When the rule was discharged, did I not state to the court that I had delivered the report to Woodyard, the commissioner, to enable him to make the sale of the balance of Brandon's property, and that said report was still in the hands of said commissioner?

Ans. I think you did say that you handed it to Woodyard, the commissioner, and would come home and get it.

By same. Was that rule discharged on the first week of the term of the court?

Ans. I do not remember.

By same. Was or not the cause continued on your motion during

the last week of the term, and several days after said rule was discharged?

Ans. I have already said that I did not remember what part of the term the subject was mentioned when I was present, but I do know that when I was present at a motion for a continuance, the record was searched, and the order was found, allowing you to withdraw the report; and you had not then filed the report, and did then promise that you would do so during the term; and I understood you did.

By same. Did not Woodyard, the commissioner, inform you that I had delivered the report to him to enable him to make the second sale, and that he did not deliver it to me again until some time during the fall term of the Bourbon circuit court, in the year 1843?

Ans. I have heard the subject mentioned, but have no recollection that Woodyard told me so.

By same. Did Woodyard ever tell you that I had refused to deliver the commissioner's report to him, that had been withdrawn from the Bourbon circuit court?

Ans. I have already made a statement in relation to that matter in this deposition.

By same. When you made the motion for a continuance of the cause at the fall term of the Bourbon circuit court, did you not state that you wished to file exceptions to the commissioner's report in that case?

Ans. I think the reason assigned for asking a continuance was, that the second report had just come in, and I asked a continuance of the cause to allow time to file exceptions.

By same. Were you the counsel of Brandon and Withers at the time you made the motion for a continuance?

Ans. I never was the counsel for Brandon after my affidavit was taken in the cause, but was Withers's counsel in all his cases, except the case with Shawhan; but after my affidavit was taken I abandoned the case, and never was counsel in the case afterwards; and at the hearing, attended to the case for Withers at his request, as stated in his letter, which you have made part of this deposition, but without any charge whatever; and when I made the motion for a continuance, it was as Withers's friend and not as his counsel; I know you to be my enemy, and believed you would slander me, and desired to take from you, as far as possible, all pretence for doing so.

By same. Do you attend to the case of Shawhan, &c., against Brandon and Withers, in the Bourbon circuit court, merely as Withers's friend and not as his counsel?

Ans. Except so far as stated above, I do not attend to it at all.

By same. Has Brandon paid you a fee for your services in said case?

Ans. Never one cent, in that or any other, except some small fees for conveyancing and surveying, that I now remember.

By same. Was I not counsel for the complainant in the said suit of Shawhan, &c., against Brandon and Withers; and was not the case

continued for the defendants at the last fall term of the Bourbon circuit court?

Ans. The record will shew whether you were or not. I think the pleadings were mostly drawn by you. You were present at the hearing and argued the case, and so far as I know have always been Shawhan's counsel in the case.

By same. In your affidavit, which was taken in the suit in chancery, in which John L. Shawhan, &c., were complainants, and Brandon and Withers were defendants, and which was removed from the Harrison circuit court to the Bourbon circuit court, you have stated that you had been the counsel of the defendants in that case, but that you abandoned the case when informed that your affidavit would be taken. I now wish you to state, who informed you that your affidavit would be taken in the case.

Ans. It is my impression that Brandon informed me. Major Wall was counsel with me, and it may have been him who stated the intention; but it is now my best recollection that it was Brandon, possibly he and Withers both; I am unable to say with certainty which; I probably remembered when my affidavit was taken, and if I was then asked the question, I answered it according to my then recollection.

By same. Were you requested by the defendants, or either of them, in that case, to give your affidavit?

Ans. I think I was by the defendants, or one of them; I however am not certain, as I have already stated, it may not have been by either of them, but it is my impression, though it is only impression, that I was informed by Withers or Brandon that my affidavit would be taken.

By same. Were you summoned to attend and give your affidavit in that case, or did you give it voluntarily?

Answer. I do not remember; the record will shew; I think I was not summoned; I do not remember ever in my life to have been summoned to give my deposition, or to take my affidavit; and if I had been summoned in that case, I think I would probably remember it.

By same. Was or not your affidavit taken on the part of the defendants in that case, to be read on a motion to dissolve the injunction which had been obtained by the complainants?

Answer. I have already answered that question.

By same. Had you been informed that your affidavit would be taken in that case, at any time before the day it was taken?

Answer. I may or may not have been thus informed; I do not now remember when I was first informed that my affidavit would be taken.

By same. Was or not your affidavit taken in that case, on the part of the defendants, for the purpose of proving, that John L. Shawhan was in your office while you were writing the deed of trust from Brandon to Withers?

Answer. It was taken to prove that fact, and probably others, which will be shewn by the affidavit itself, a copy of which you have stated you have in your possession.

By same. Do you not know that your affidavit was taken on the part of the complainants in that case?

Answer. I do not; my impression is, that it was taken on the part of the defendants; if you will copy the caption of the affidavit, I have no doubt but it was correctly entitled.

By same. Do you not know that Woodyard and Redmon's depositions were taken in that case, on the part of the complaimants, Shawhan and others, for the purpose of proving, that John L. Shawhan was not in your office while you were writing the deed of trust?

Answer. I was not present when either Woodyard's or Redmon's affidavits were taken, and it is impossible for me to know what motive influenced the persons who had their depositions taken; if my mere opinion is wanted, it is, that those depositions then, as your course of examination now, was adopted merely to gratify your malice towards myself.

By same. Did James Arnold, the clerk of the Bourbon circuit court, ever give you any information on the subject of my withdrawing the commissioner's report in that case, except what is contained in his letter heretofore alluded to in your deposition?

Answer. I have already produced his letter on the subject, and when you have a right to ask me the question, I will answer it.

By same. Did not Wherritt say in your presence, while your deposition was taken, that he never had called on me for the commissioner's report in that case, and that he never had informed you that he had done so?

Answer. I do not remember; there was something said on the subject; Mr. Wherritt now says he did not make such statement; I did not charge my *meory* with the words, and do not pretend to remember the substance with sufficient certainty to answer.

By same. Does Wherritt now say, that he did not say, while your deposition was taking, that he never called on me for the commissioner's report in that case?

Answer. You and others present have heard as well as I, and I therefore do not pretend to state what he says.

By same. Did not Wherritt say in your presence to-day, that he never did inform you that I had refused to give up the commissioner's report in that case?

Answer. That statement has been made in public, and I have now been annoyed enough by your interrogatories on that subject, and would be justified in refusing to answer the question; but to save the appearance of captiousness, I answer, that he does say so; but in taking these depositions, you have admitted that you refused to deliver up the report to be returned to the clerk's office, but delivered it to Woodyard, the commissioner.

By same. Did Withers ever take the case of Shawhan, &c., against Brandon and Withers, to the court of appeals by writ of error?

Answer. He has not, so far as I know; I understood from Arnold probably, at least by some one, that he had ordered a copy of the record

for that purpose, and have seen an imperfect copy of the record; but understood that the commissioner's report had not been returned, and that the clerk could not make out the record; I have heard nothing about the case since last court, and supposed it had not been taken up.

By same. Do you know the reason why the case has not been taken to the court of appeals by Withers?

Answer. No, I do not; nor do I know that it has not been taken up.

And further this deponent saith not.

J. R. CURRY.

We, Perry Wherritt, complainant, and John Trimble, as counsel for John L. Shawhan, Benjamin Berry, and Dan'l Shawhan, defendants, do waive all objections to the foregoing depositions, on the score of notice of the time and place of taking the same; but reserve to ourselves the right of objection to them, or either of them, on the ground of interest, or other incompetency of the witnesses.

Given under our hands, this 22d February, 1844.

P. WHERRITT, *Ass'ee.*
JOHN TRIMBLE,
Attest: JNO. O. HODGES, *Com'r.*

I, John O. Hodges, commissioner in bankruptcy, for Harrison county, State of Kentucky, do certify, that the foregoing 70 pages of depositions, (and the notice thereunto annexed,) containing the depositions of William A Withers, Benson Roberts, James Fraizer, J. V. Bassett, Joseph Patterson, and James R. Curry, were taken, subscribed, and sworn to before me, as commissioner in bankruptcy, duly qualified, according to, and agreeably to the notice herewith annexed, commencing on the 8th day of February, 1844, and continuing until the 16th day of February, 1844, inclusive, (Sunday excepted,) taken on the part of Perry Wherritt, to be read as evidence for him in a suit in chancery, now depending in the United States district court, for the district of Kentucky, in which said Wherritt, as assignee in bankruptcy of Benjamin Brandon, is complainant, and John L. Shawhan, Daniel Shawhan, Benjamin Berry, and others, are defendants.

In testimony of which, I have here set my hand and seal, this twenty-fourth day of February, 1844.

JNO. O. HODGES, *Com'r.* [SEAL.]

The deposition of Maj. Kinsbrough, taken in the court house, in the town of Cynthiana, on Monday, the 19th day of February, 1844, to be read as evidence for the defendants in a suit in chancery, now depending in the United States Kentucky district court, in bankruptcy, in which Perry Wherritt, as assignee of Benjamin Brandon, a bankrupt, is a complainant, and John L. Shawhan and others are defendants. The deposition of Major Kinsbrough, of lawful age, and duly sworn, deposeth and saith:

Question by defendant's counsel.

Were you in James R. Curry's law office, in the town of Cynthiana,

on the evening that the deed of trust was made by Benjamin Brandon to William A. Withers?

Answer. Yes, I stepped into Curry's office a short time before sunset, on the evening that said deed of trust was made, as I understood; I was not present when the deed of trust was made, but I understood it was made that evening after dark, and after I left the office; I know it was the same evening that I understood Benjamin Brandon went to Cynthiana to have the deed of trust made.

By same. What was Curry doing when you came to his office on that evening?

Answer. When I stepped into Curry's office he was writing at his table; I asked him what he was writing, and he told me he was writing the deed of trust from Brandon to Withers, and that Withers was to be the trustee; I read a few lines of the deed of trust that he was writing, and ascertained that it was a conveyance by Benjamin Brandon to William A. Withers.

By same. Had you any conversation with Curry on the subject of the deed of trust?

Answer. We had some conversation on the subject, in which he informed me that William A. Withers was to be the trustee.

By same. When the conversation ceased between you, did or not, Curry commence writing again?

Answer. After we conversed a little while, Curry commenced writing again; after Curry commenced writing again, I got up and looked at what he was writing, and saw that it was a conveyance from Brandon to Withers; I was then standing with my back to the door of the office, and I heard some person step into the door, at which time Curry drew a paper over the sheet on which he was writing; I then looked round, and saw that it was John L. Shawhan that had stepped into the door of the office; Shawhan then asked me if I was ready to ride, and I told him I was; just as he spoke to me, Curry's little daughter stepped into the office and told him that supper was ready; Shawhan and myself then left the office, and went together to Broadwell's corner; as we were going on to Broadwell's corner, Shawhan informed me that he suspected there was something going on he did not like, and requested me to stay awhile with him; I informed him I could not stay; and he then requested me to go to Charles Redmon's, and inform him that Shawhan wished said Redmon, or John Redmon, to come to Cynthiana immediately; John L. Shawhan and myself stopped a short time at Broadwell's corner, and while we were standing there, Curry and his little daughter passed by, and went towards his own house; I then left Shawhan at Broadwell's corner, and got on my horse and went to Charles Redmon's; I there informed John Redmon that Shawhan wished him to go to Cynthiana immediately; and Redmon then got on his horse, and started to Cynthiana, and I came to the forks of the road with him; I then went home, and Redmon then went on towards Cynthiana. It was about sunset when Shawhan and myself left Curry's office; and there was no conversation between Curry and Shawhan, while I was at the office, re-

specting the deed of trust, or any other subject. The whole of the conversation that passed on the subject of the deed of trust, on that evening, at Curry's office, in my presence or hearing, took place between Curry and myself. And that conversation was not in the presence of John L. Shawhan, but took place before he came there. It was about sunset when I left John L. Shawhan at Broadwell's corner, and started to Charles Redmon's; and I got there about dusk; we remained but a few minutes at Broadwell's corner after we left the office.

Question by Perry Wherrit. Are you a creditor of John L. Shawhan?

Answer. No.

By same. Does he not owe you as the security of Brandon?

Answer. No.

By same. Did not Shawhan mortgage his property to you since he levied his injunction of Brandon's property?

Answer. He did mortgage to me on the day the injunction was levied.

By same. Who else were named in the mortgage with you from John L. Shawhan?

Answer. Asberry Broadwell, Wm. Patton, Wm. Griffith, James Shirley, Wesley Birney, Nicholas Brindley, Dan'l Shawhan, jr., Susan Tremble, Geo. Redmon, Silas Sparks, John Redmon, James Shirley, Jacob David, Elias Tucker, Wm. Leach, John Trimble, Catharine Snodgrass, Newton Anderson, Samuel Dells, Henry Brainger, Nicholas Smith, John Snell, William Hall, Molly Snell, Joel C. Fraizer, the President, Directors and Company of the Northern Bank of Kentucky, Joseph Shawhan, jr., John Shawhan, sr., Charles Redmon, John Lail, and Daniel Shawhan, sr., are named in said mortgage as mortgagees with me.

By same. Are you John L. Shawhan's security in his bill of injunction against Benjamin Brandon and Wm. A. Withers?

Answer. I am one of his securities in his injunction bond, in the suit of John L. Shawhan & others against Brandon and Withers.

By same. What is the amount of the bond given by Shawhan on which you are a security?

Answer. As well as I recollect, I think it was about $12,000; a copy of the bond is now presented to me, and it shows that the amount is $12,000; that is the penalty of the bond.

By same. Who are the other security, or securities, with you in said bond?

Answer. Chas. Redmon.

By same. Are you not the brother-in-law of Jno. L. Shawhan?

Answer. Yes, I am.

By same. Do you not feel some interest in the decision of this suit?

Answer. I do feel some interest, as I have claims against Brandon's estate.

By same. Did John L. Shawhan accompany you to the farm of Benjamin Brandon, on the day on which the deed of trust was made, (as you understood.)

Answer. He did not; but he was there.

By same. Was John L. Shawhan informed on that day at Brandon's farm, by any one, that a deed of trust was about to be made from Brandon to Withers; if so, who so informed him?

Answer. I know nothing about that.

By same. Did you not tell Shawhan to come to town, and see what was done, and satisfy himself?

Answer. I did not tell Shawhan anything about it.

By same. Did you tell Shawhan, after you left Curry's office, on the night the deed of trust was made, that said deed was making from Brandon to Withers?

Answer. Yes, I told him as we went from Curry's office to Broadwell's corner, that Brandon was making a deed of trust to Withers; and I said that Withers was a very suitable person; and Shawhan said he was not satisfied, as Broadwell and Withers *was* too intimate he was afraid; and then asked me to stay; I told him I could not; and then, at his request, went to send to John Redmon to town, because he, Shawhan, informed me there was something going on he did not like, as he thought.

By same. How long had you been at the farm of Brandon when Shawhan came there?

Answer. He was there before me.

By same. Did you see Brandon?

Answer. I saw Brandon at a distance, I think; but would not be positive.

By same. Do you know where Brandon went after you saw him?

Answer. I do not.

By same. Do you not know that he, Brandon, was then avoiding the service of process on him, and did not want to be seen?

Answer. I do not know it.

By same. Did you see Brandon afterwards that day or night?

Answer. I did not.

By same. *Was* you not informed that day, when you were at Brandon's farm, that he, said Brandon, was avoiding the process of law?

Answer. No, not that I recollect; I heard so afterwards.

By same. Who told you he avoided the process of law?

Answer. I am not able to say who.

By same. Did you come to town with John L. Shawhan the night, or evening, on which the deed of trust was made?

Answer. We came in company after dinner.

By same Do you know that John L. Shawhan was not in the office of James R. Curry, before you *was* in said Curry's office on the evening you speak of?

Answer. I do not know.

By same. Might said Shawhan have been there, and you not have known it?

Answer. He might have been.

By same. Did ever Shawhan tell you he was present, and heard the deed of trust executed?

Answer. He never did; he told me he was not there.

By same. Did he ever tell you he was satisfied with the deed of trust at any time after it was made?

Answer. He never told me he was satisfied.

By same. If you are not a creditor of John L. Shawhan, why did he include you in his mortgage?

Answer. Because I stood bound in the bond as his security in which he enjoined Brandon's property.

Question by counsel of John L. Shawhan. Are you or not a creditor of Benjamin Brandon?

Answer. Yes, I am.

By same. If John L. Shawhan and the other defendants in this suit succeed against Wherritt, the complainant, will you be a gainer thereby?

Answer. I will not be a gainer thereby, but a loser; if Wherritt gains the suit, I shall be a gainer thereby.

By same. *If* the interest which you have in this suit in favor of John L. Shawhan and the other defendants, or against them, and in favor of the complainants?

Answer. My interest in this suit is in favor of the complainant Wherritt, and against John L. Shawhan and the other defendants.

Question by Perry Wherritt. If John L. Shawhan should be cast in this suit, would you not be involved as his security?

Answer. I think I have property enough bound to pay me.

By J. L. Shawhan's counsel. Are you bound a security for John L. Shawhan in this suit in the federal court, or in the suit in the Bourbon circuit court?

Answer. I am not bound as John L. Shawhan's security in this suit, but I am bound as his security in the injunction bond in the Bourbon circuit court.

At this stage of the matter, there not being time to close, the examination was adjourned over until to-morrow morning at 9 o'clock, to meet at same place.

Tuesday morning, February 20, 1844.

Met pursuant to adjournment, and continued the examination.

The complainant, Perry Wherritt, objects to the deposition of Major Kinsbrough, entirely and throughout, on the ground that Kinsbrough is the security of Shawhan on the injunction bond executed in the suit of Shawhan against Brandon and Withers, in chancery, in the Bourbon circuit court, which bond is dated on the 3d day of May, 1842, with Charles Redmon as co-security.

The whole deposition being read to the witness, and approved by him, and no further questions being asked, or desired to be asked, the *the* examination was closed.

And further this deponent saith not.

M. KINSBROUGH.

Also the deposition of John Redmon, taken at the same place, on the

20th of February, 1844, to be read as evidence on the part of the defendants, in the aforesaid case of Perry Wherritt, complainant, against John Shawhan, &c., defendants, in the district court of the United States, for the Kentucky district.

This deponent being of lawful age, and first duly sworn, deposes as follows, to wit:

Question by counsel of John Shawhan. If you were in the town of Cynthiana, in company with John Shawhan, on the night that the deed of trust from Benjamin Brandon to William A. Withers was made, state what induced you to come to town that night.

Answer. I was in Cynthiana on the night that I understood the deed of trust was made; Major Kinsbrough informed me that John Shawhan wished my father or me to come to town that night.

By same. What time of the evening was it that you started to Cynthiana that evening?

Answer. It was about dusk.

By same. Where did you meet with John L. Shawhan when you came to town that night?

Answer. I found him at Webster's corner.

By same. When you came to town, what did Shawhan say he wished you to do?

Answer. He requested me to stay with him that night, and watch to see if Brandon came to the clerk's office.

By same. Where were you standing when you first saw Brandon, after you came to town?

Answer. John L. Shawhan and myself were standing near the south west corner of the court house, inside of the enclosure around the court house yard.

By same. Who were with Benjamin Brandon when you first saw him that evening?

Answer. Cincinnatus Brandon came with Benjamin Brandon to the back gate of the enclosure around the court house yard; there was another man in company with them, but, at the distance where I stood, I did not then know who the other man was.

By same. Did or not Benjamin Brandon pass through the gate and go towards James R. Curry's office?

Answer. Yes, he did.

By same. Did or not John L. Shawhan go to the back gate, and converse a short time with the persons that were standing there?

Answer. He did go to the back gate and converse with Cincinnatus Brandon and the other person that was there.

By same. Where did John Shawhan go to when he left the back gate?

Answer. He came to me where I was standing, and we then went out at the front gate of the enclosure around the court house yard.

By same. Where were you standing when John L. Shawhan came to you, when he left the back gate of the enclosure?

Answer. I was standing near the south end of the court house, and not far from the end door of the court house.

By same. From the time that John L. Shawhan went to the back gate of the enclosure, to the time that he returned to where you were standing, was he out of your sight at any one time, or could you see him all the time that he was conversing with the persons at the back gate?

Answer. He was not out of my sight at any time, from the time he went to the back gate to the time that he returned to where I was standing.

By same. Where did you and John Shawhan stay, from the time that you went out at the front gate of the enclosure until you saw the door of Curry's office opened, and some of the company coming out?

Answer. We were sometimes in the street and sometimes in the court house yard, but generally in sight of the door of Curry's office.

By same. Did you see Benjamin Brandon or Cincinnatus Brandon go into Curry's office that night?

Answer. I did; Benjamin Brandon went into the office immediately after he came to the back gate of the enclosure. Cincinnatus Brandon went into the office after John L. Shawhan returned from the back gate.

By same. When you saw the door of Curry's office opened, and some of the company coming out, where did you and John L. Shawhan go to?

Answer. We then concluded that the company in Curry's office was breaking up, and I then started home and left Shawhan in the street.

By same. Were there any lights burning in the houses in town when you started home and left John L. Shawhan?

Answer. I saw but one light burning, and that was in Webster's tavern. There might have been a light in Curry's office, but I did not notice it, after the company came out of the office.

By same. What time of night was it that you started home from Cynthiana and left John L. Shawhan?

Answer. I suppose it was between ten and eleven o'clock when I left Cynthiana; I went home, a distance of about a mile and a half, and found the family had gone to bed, and a short time afterwards the clock struck eleven.

By same. What time of the night was it that Benjamin Brandon came to Cynthiana that night?

Answer. I suppose it was between eight and nine o'clock, and he went into Curry's office immediately after he came to town.

By same. Can you state whether John Shawhan was in Curry's office from the time that you saw Benjamin Brandon go into Curry's office that night, until you left John Shawhan in the street and started home?

Answer. I know that John Shawhan was not in Curry's office from the time that I saw Benj. Brandon go into Curry's office that night, to the time that I started home and left John L. Shawhan in the street, as heretofore stated. I was in company with Shawhan all the time, from the time that Brandon went into Curry's office that night, to the time

that I left Shawhan in the street and started home, as heretofore stated; and if Shawhan had gone into Curry's office during that time, I must have known it, as he was not out of my sight at any time during the whole of that period.

By Perry Wherritt. How far *was* you standing from the south door of the court house when Brandon and his son came to the west gate of the court yard?

Answer. I do not know, as I never measured the distance.

By same. Did you not say, in your former deposition, that you were standing in or near the south door of the court house, when Brandon and his son came to the west gate of the court-yard?

Ans. Said I was standing near the southwest corner of the court house, near the back gate.

By same. Do you know, that John L. Shawhan did not go into Curry's office, at any time, on the night the deed of trust was made?

Ans. He did not go into Curry's office, from the time that Benjamin Brandon came to the back gate, and went into Curry's office, to the time that I left him in the street and started home.

By same. Was the light extinguished in Curry's office, when you saw the men you spoke of come out?

Ans. I do not recollect; some of the men came out, and left others standing about the door.

By same. Are you a creditor of John L. Shawhan, and one of his mortgagees?

Ans. I am one of his mortgagees, and the debt for which he executed the mortgage to me has been paid off; but since the expiration of the mortgage, Shawhan has become indebted to me, in something like $105, which is unpaid.

By same. Are you or not the brother-in-law of John L. Shawhan?

Ans. I am.

Thursday, February 22d, 1844.

Met according to adjournment on yesterday, and continued the deposition of John Redman.

Question by John L. Shawhan's counsel. Have you the note or notes now in your possession which you hold on John L. Shawhan?

Answer. I have them now before me; they bear date the 12th day of June, 1843. One is for $80, and was due on the day of the date; the other is for $30, and due one day after date, with credit of $5 endorsed.

And further this deponent saith not.

JOHN REDMON.

Also the deposition of James W. Nesbitt, taken at the same time and place, to be read as evidence on the part of the defendants in the aforesaid suit.

Question by John L. Shawhan's counsel. Did you or not see John L. Shawhan and John Redmon together, in the town of Cynthiana,

on the night that the deed of trust from Benjamin Brandon to William A. Withers was executed?

Answer. I did; I saw them in the court house yard at different times, and once or twice in the street.

By same. What time of night was it that you first saw John L. Shawhan and John Redmon together that night?

Answer. It was about 9 o'clock, they were then standing together in the court house yard.

By same. Were you at the sale of the Brandon farm when it was sold by the commissioner under the decree of the Bourbon circuit court?

Answer. I was.

By same. Did or not John Lail bid for a part of the land at that sale?

Answer. He did; the land was sold in different parcels, and I recollect that John Lail bid for one of the parcels.

Question by Perry Wherritt. Did John Lail buy any part of the Brandon farm, when sold by the commissioner under the decree of the Bourbon circuit court?

Answer. He did not.

By same. How much did he bid for it per acre?

Answer. I do not recollect.

By same. Who did buy the land at that sale?

Answer. John L. Shawhan.

By same. How much did he give for it per acre?

Answer. I do not recollect what he gave.

By same. Was it as much as $25 per acre?

Answer. A part he gave that much for, and a part less.

By same. *Was* you at the sale of Brandon's property, as sold by the commissioner, before the land was sold?

Answer. I was.

By same. Did you purchase any thing at that sale, and if you did, say what it was.

Answer. I did not buy any thing.

By same. Did the property sell for a fair price in common with the property of the country of the same description, at that sale?

Answer. I think it did, owing to the circumstances it sold under.

By same. Are you a creditor of John L. Shawhan?

Answer. I am, in a small way.

By same. Are you named as one of his creditors in his mortgage?

Answer. I do not know.

By same. Did you see John Redmon apart from John L. Shawhan on the night the deed of trust was made from Brandon to Withers?

Answer. I did not, that I recollect.

By same. What did you come to town for on that night?

Answer. I came to town to watch the movements of Col. Brandon.

By same. Did you hear before you came to town what Col. Brandon was about to do in relation to his property?

Answer. I did not.

By same. How did you know Col. Brandon was coming to town on that night?

Answer. I was told by somebody, but do not recollect who.

By same. Did you see B. Brandon at any time on that day, preceeding the night on which the deed of trust was made?

Answer. I did not.

By same. Do you know where he was on that day, or where he came from that night?

Ans. I do not.

By same. Did you understand that he, said Brandon, was on that day dodging the sheriff?

Ans. I did.

By J. L. Shawhan's counsel. Are you or not, a creditor of Benjamin Brandon's?

Ans. Yes, I am.

By same. Is or not the debt, that John L. Shawhan owes you, the joint debt of Shawhan and Brandon as partners?

Answer. It is.

By same. Is or not Benjamin Brandon indebted to you individually besides that joint debt?

Answer. He is.

And further this deponent saith not.

J. W. NESBIT.

Thomas B. Woodyard, of lawful age, and first duly sworn, was called and examined as a witness on behalf of the defendant, John L. Shawhan, and deposes as follows:

Question by John L. Shawhan's counsel. Did you, as commissioner, make a sale of a part of Benjamin Brandon's property some time in November, 1842, and return a report of the sale to the Bourbon circuit court?

Answer. I did.

By same. Did you or not, as commissioner, sell the tract of land on which Brandon resided, under the decrees of said court; and was not said sale made some time in July, 1843?

Ans. I find, from a memorandum in my possession, that said sale spoken of was made the 14th July, 1843, and I did sell said land, as commissioner, appointed by a decree of the Bourbon circuit court.

By same. Was it not necessary for you to have that report in your possession, to enable you to make said second sale?

Ans. Yes, it was; and I would not have known how much of the property was necessary to be sold without having said report in my hands.

By same. Did I or not, as counsel for the complainants in the case of Shawhan, &c., against Brandon and Withers, withdraw said report from the Bourbon circuit court, and hand to you some time before you made said sale in July, 1843?

Ans. How you became in possession of it I do not know; but I

know that you gave it to me before I advertised said sale of land that took place in 1843.

By same. Did I ever refuse to deliver that report to you, or did you ever apply to me for it?

Ans. I do not think that you ever refused to give the report to me. My impression is, that you gave it to me without my calling on you for it.

By same. Did you ever inform James R. Curry, or any other person, that I had refused to let you have that report?

Ans. I never did.

By same. Did you ever know that I had withdrawn that report from the Bourbon circuit court, until I informed you I had withdrawn it, to enable you to make the second sale under the decrees of the Bourbon circuit court?

Ans. I heard Maj. Curry talking about the report being withdrawn, but whether it was before or after you informed me of your having it, I am unable to say.

By same. Did not James R. Curry know that you were the commissioner, appointed by the Bourbon circuit court, to sell said Brandon's property under the decree of said circuit court?

Ans. I think he must have known that fact. I think he was the first one that informed me of the same.

By same. Did the counsel of Brandon and Withers ever apply to you for that report, or a copy of it, while it was in your hands?

Ans. I think not.

By same. Did you finish your report of the second sale of Brandon's property until some time during the fall term of the Bourbon circuit court, in the year 1843?

Answer. I commenced my report some time before the court referred to; but it being somewhat difficult and tedious, I am inclined to think that the same was not finished until that court had commenced; and I think I handed you the same during the time of the sitting of said court.

By same. Did I not return home from court at the end of the first week of the last fall term; and did you not hand me the report after my return?

Ans. I have stated that my impression was that I had handed it to you during the term; but I cannot say whether you had been to Paris and returned, before I gave you the report, or not.

By same. Do you not remember that when I was about to start to the Bourbon circuit court, last fall, that you informed me you had not finished the report, but that you would finish it and bring it up yourself, or send it to me in time to have it acted upon?

Ans. Whether that conversation was just before court commenced, or about the time you started to court, I do not now recollect. I did tell you that I would bring the report, or send it; but I think I either gave it to you myself, as I have already stated, or left it in your office; but my opinion is that I gave it to you during the term.

At this stage of the proceedings, there not being time to close the examination on this day, the matter was adjourned over until to-morrow morning, 9 o'clock, to meet at the same place.

Thursday morning, February 22d, 1842.

Met pursuant to adjournment, and resumed the examination of Thomas B. Woodyard as follows:

Question by John L. Shawhan's counsel. Did John Lail bid for any part of the Brandon farm when you made the sale of the land as commissioner, under the decree of the Bourbon circuit court?

Ans. I think he did.

By same. Was your deposition taken in the suit in chancery in which John L. Shawhan, &c., were compl'ts, and Brandon and Withers were def'ts, and which was removed from the Harrison circuit court to the Bourbon circuit court?

Answer. It was.

By same. Are you willing to adopt that deposition as your deposition in this case?

Ans. I am. That deposition, consisting of questions and answers, is as follows, a certified copy of which is now before me. The questions put to me by the complainants' counsel and the defendant's counsel, in that case, will appear as follows:

Question by complainants' counsel. State whether you were in James R. Curry's office on the night that the deed of trust from the defendant, Brandon, to the defendant, Withers, was drawn and acknowledged?

Ans. I was in Curry's office that night. Mr. Curry was writing a deed of trust when I came to the office, and, after he finished it, he copied it off; in copying it he may have made some slight variations from that which he was writing; when I came in the deed, as copied, was then acknowledged before me as clerk of the county court of Harrison county.

By same. Who went with you to Curry's office that night?

Ans. I think the defendant Withers and myself went there together.

Question by complainants' counsel. Who went with you to Curry's office on the night the deed of trust from Brandon to Withers was drawn and acknowledged?

Ans. I think the defendant Withers went with me.

By same. Was there any person in Curry's office when you went there that night?

Ans'r. I think there was no person in the office when we went there except Curry.

By same. What time of the night was it that you and Withers went to Curry's office?

Ans. I think it was dark; there was a candle burning in the office, and it was so dark that it was necessary to have candle to write by.

By same. Who came to the office after you went there?

Ans. I do not recollect of any person coming to the office after I went there, except Benjamin Brandon, William Snodgrass, Nathan

Stewart, and Cincinnatus Brandon, the son of Benjamin Brandon; there might have been a negro boy there, but of that I am not certain.

By same. Was Nathan Stewart in the office after Benjamin Brandon came there, or before?

Ans. I am not able to say; but I do not think that Stewart was there while Brandon was there; my recollection is now very indistinct on the whole subject.

By same. What part of the office did you sit in while Curry was drawing the deed of trust?

Ans. Curry's writing table stood opposite to the window, that is, on the right hand side of the door as we go into the office, and I sat at the end of the table next to the door.

By same. Did Benjamin Brandon, William Snodgrass, and Cincinnatus Brandon, come into the office while you were sitting at the end of the table?

Ans. I think they did; but I do not recollect that they all came together.

By same. Was the door of the office generally shut while you sat at the end of the table?

Ans. I think not.

By same. When the door shutter of the office stands in its usual position when it is opened, is there room enough between the door shutter and the end of the table, as it then stood, for you to sit between the table and the door shutter?

Ans. I think so.

By same. When the door shutter of the office stood open its usual width, was there room enough for you to sit between the end of the table and the door shutter?

Ans. If the door shutter stood back as far as there is a piece of plank nailed on the floor, probably there would not have been room enough for me to sit between the table and the door shutter.

By same. Was there any conversation in the office while Curry was drawing the deed of trust?

Answer. There was some conversation going on a part of the time?

By same. From where you sat in the office could you distinctly see Benjamin Brandon, William Snodgrass, William A. Withers, and Cincinnatus Brandon?

Ans. I am satisfied I saw all of them while I sat there.

By same. If John L. Shawhan had set by the stove while you sat at the end of the table, could you or not have seen him?

Ans. I think so, if I had been awake.

By same. Were you asleep all the time while you sat at the end of the table?

Ans. No, I was not; I might have been asleep a part of the time.

By same. Were you asleep when Curry finished the deed of trust?

Ans. I cannot say.

By same. Did any person waken you that night?

Answer. Not that I recollect of.

By same. Can you positively say that you were asleep that night while you sat at the end of the table?

Ans. I recollect that I had my head down on the table a part of the time, but how long I do not know, and my impression is that I was asleep a part of the time, but I cannot say positively that I was asleep.

By same. Did you hear the deed of trust read after it was drawn, and before it was acknowledged?

Ans. I did; Curry read it in my presence.

By same. Were Benjamin Brandon, William Snodgrass, William A. Withers, and Cincinnatus Brandon, in Curry's office when the deed of trust was read?

Ans. I think Benjamin Brandon and Withers were there when the deed of trust was read, and I saw Cincinnatus Brandon in the office immediately afterwards; but whether he and Snodgrass were there when the deed was read, or not, I do not recollect.

By same. Did you see John L. Shawhan in the office when the deed of trust was read and acknowledged, or afterwards, on that night?

Ans. I have no recollection of seeing or hearing John L. Shawhan in Curry's office that night, at any time.

By same. From the time that James R. Curry commenced reading the deed of trust until the company dispersed, were you asleep at any time, or were you awake the whole time?

Ans. From the time that Curry commenced reading the deed of trust until I left Curry's office, I was not asleep at any time.

By same. Was the deed of trust acknowledged before you as clerk of the Harrison county court?

Answer. It was.

Cross interrogated by defendant's counsel.

Question by defendant's Is or not your recollection of what occurred that night indistinct; and, if so, the reason why?

Ans. It is; the night before that deed of trust was executed I lost a good deal of sleep, as my child was sick, and did get asleep until about 2 o'clock; I got up very early to prepare to go Millersburg, distance some 12 miles, to attend a masonic funeral procession; I went in a buggy, attended the funeral, walked about 2 miles, started home, was upset, and got home between sundown and dark, very much fatigued.

Question. May you or not have slept more in Curry's office that night than you are conscious of, from the circumstances of your loss of sleep and fatigue?

Ans. I may have done so; can't say how much I did sleep.

Question. Was there any thing particular to attract your attention as to who was in the room?

Answer. There was not; I was called there to take the acknowledgment of the deed; took it when the deed was finished, and felt no further interest in it.

Question. From all the circumstances, are you prepared to say that John L. Shawhan was or not there?

Ans. I am satisfied he was not there while I was awake; if he had been while I was awake, I should have seen him.

Question. After you took the acknowledgment, did you or not leave the office immediately; and if you did, did you leave any one there?

Answer. I did, and left all that were there behind; no one left with me.

Question. From your situation behind the door, might not persons have passed in and out without your seeing them?

Ans. I was sitting behind the door, between the door and the table; a person might have come in some three or four feet without my seeing them, but not further; that is, if I was awake.

Question. Did you or not rest your head on the table a part of the time, while you were not asleep?

Ans. I have no hesitation in saying my head was on the table some part of the while I was not asleep?

Question. Have you or not any recollection of seeing John L. Shawhan in town that night?

Ans. I have a recollection of seeing John L. Shawhan in the court-house yard that night; but whether it was as I went to Curry's office, or was leaving, I am not able to state. I think I saw him in the yard on the right hand of the path that leads from Curry's office to the gate which leads out opposite Webster's tavern, near the fence; it is also to the best of my recollection that it was as I went to the office.

Question. Are you or not prepared to state any thing more as to Shawhan being in Curry's office that night, than that you did not see him?

Answer. That is all; I did not see him to my recollection; but if he had come into the office while I was awake, I am inclined to think I should have seen him, if he had remained any time.

Question. Were there or not several individuals there during the preparation of the deed; and were they or not passing in and out repeatedly?

Answer. There were several people, and they were passing in and out; but to my recollection, none but what I have already stated.

Question. Is there any thing in the appearance of Mr. Shawhan, or the circumstances attending the transaction, that would have called your attention to Mr. Shawhan, had he been there?

Ans. I do not know that there is.

By same. If you had seen John L. Shawhan in Curry's office that night, do you or not think you would have recollected it?

Answer. I think I should.

Question that was not in former deposition. When you left the office that night, did you or not take the deed of trust with you, and keep it until it was recorded?

Answer. I put the deed of trust in my hat that night, and, in the morning after, I took it to the office and left it there; and on that day I think it was recorded.

Question by Perry Wherritt. Did you (as commissioner under the

decree of the Bourbon circuit court) sell the Brandon farm; if so, who was the purchaser, and what did it sell for?

Answer. I did, as commissioner, sell some of the land that belonged to Brandon at the time he made the deed of trust to Withers, a few acres having been previously sold by a decree of the Harrison circuit [court,] for a balance of the purchase money that was due on the same, and John L. Shawhan became the purchaser thereof, as follows:

Forty acres, including mill, &c., at $50 per acre -	$2,000
120½ acres at $8 per acre - - - -	964
163½ " 22 " - - - -	3,597
Whole amounting to - - - -	$6,561

That being the residue of the land. And further saith not,

THOS. B. WOODYARD.

We, Perry Wherritt, complainant, and John Trimble, as counsel for John L. Shawhan, Benjamin Berry, and Daniel Shawhan, defendants, do waive all objections to the foregoing depositions, on the score of notice of the time and place of taking the same, but reserve to ourselves the right of objection to them, or either of them, on the ground of interest, or other incompetency of the witnesses.

Given under our hands, this 22d day of February, 1844.

P. WHERRITT,
Assignee.
JOHN TRIMBLE.

Attest: JOHN O. HODGES,
Commissioner.

I, John O. Hodges, commissioner in bankruptcy for Harrison county, Kentucky, do certify, that the foregoing thirty-three pages of depositions, (including this page,) containing the depositions of M. Kinsbrough, John Redmon, James W. Nesbit, and Thomas B. Woodyard, were taken, subscribed, and sworn to, before me, as commissioner, at the court-house in Cynthiana, on the 19th, 20th, 21st, and 22d days of February, 1844, between the hours of 8 A. M., and 6 P. M., of those days, to be read as evidence on the part of John L. Shawhan, Daniel Shawhan, and Benjamin Berry, in a suit in chancery, now depending in the United States district court for the district of Kentucky, in which Perry Wherritt, as assignee in bankruptcy of Benjamin Brandon, is complainant, and John L. Shawhan, and others, are defendants.

In testimony of which, I have set my hand and seal, this 24th day of February, 1844. JOHN O. HODGES, *Com'r.* [SEAL.]

Pleas before the honorable John Catron and Thomas B. Monroe, judges of the eighth circuit court of the United States, for the Kentucky district, holden at the capitol, in the town of Frankfort, at the November term thereof, A. D. 1844.

Be it remembered, that heretofore, to wit, on the 18th day of No-

vember, in the year aforesaid, the following entry was made herein, to wit:

PERRY WHERRITT, assignee of Benjamin Brandon, complainant,
against
JOHN L. SHAWHAN, BENJAMIN BERRY, and DANIEL SHAWHAN, &c., defendants.

In chancery, upon an appeal from a decree of the district court.

This day came the parties, by their counsel, and thereupon, this cause came on to be heard, and there not being time to go through with the cause, it is laid over until to-morrow morning.

And afterwards, to wit, on the 22d day of November, in the year aforesaid, came again the parties, by their counsel, and the court being now sufficiently advised of and concerning the premises, do consider that the decree of the district court be affirmed; which is ordered to be certified to said court.

And that the said John L. Shawhan, Benjamin Berry, Daniel Shawhan, and George H. Perrin, Catharine Snodgrass and Isaac Miller, pay to the said complainant his costs herein expended.

Whereupon, the said defendants prayed an appeal to the Supreme Court of the United States, which is granted them, on condition that they enter into bond within sixty days from this time, in the clerk's office of this court, with John Shawhan, sen., Joseph Shawhan, and Charles Redmon, or any two of them as securities, in the penalty of $6,500, conditioned according to law.

And on the same day, the following order was made herein, to wit: On the trial of this appeal, the appellants' counsel moved the court to reject the deposition of William A. Withers on the score of interest, which objection was sustained by the court, and the deposition was rejected, as it was in the district court.

The appellants' counsel also objected to the reading of the deposition of George Lail, and of all the depositions taken on the part of the petitioner in the case of Benjamin Brandon in bankruptcy; which objection was sustained, and said depositions were rejected as evidence, and constitute no part of the record in this case. But the balance of the record was read as evidence in accordance of the order of the district court, when the clerk was directed to make up the record in the appeal sent up to the circuit court. The following is a copy of the appeal bond referred to:

Know all men by these presents, that we, John L. Shawhan, Daniel Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, Isaac Miller, and John Shawhan, sen., Charles Redmon, and Joseph Shawhan, are held and firmly bound unto Perry Wherritt, assignee of the bankrupt estate of Benjamin Brandon, in the sum of $6,500; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally,

firmly by these presents. Sealed with our seals, and dated this 4th day of December, 1844.

The condition of the above obligation is such, that whereas the above bound John L. Shawhan, Daniel Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, and Isaac Miller, have prayed for and obtained an appeal from a decree of the eighth circuit court of the United States of America, in and for the district of Kentucky, pronounced at the November term, 1844, affirming the decree of the district court, in a certain suit in chancery, wherein the said Perry Wherritt, assignee of the bankrupt estate of Benjamin Brandon, was complainant, and John L. Shawhan, &c., were defendants.

Now, if the above bound John L. Shawhan, Daniel Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, and Isaac Miller, shall well and truly prosecute the said appeal with effect, or on failure thereof, pay to the said Perry Wherritt, assignee of the estate of Benjamin Brandon, the several sums of money decreed by the district court to be paid to the said Wherritt, assignee, &c., by the defendants therein, John L. Shawhan, Daniel Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, and Isaac Miller, the sum of $2,675 37 cents, with interest thereon, at the rate of 6 per centum per annum, from the 10th day of June, 1844, until paid; and, also, all rents that have or may accrue for the use and occupency of 360 acres of land, referred to in the proceeding in said cause, and now in possession or held by said John L. Shawhan, and all damages and costs that may be awarded against them, the said John L. Shawhan, Daniel Shawhan, George H. Perrin, Benjamin Berry, Catharine Snodgrass, and Isaac Miller, then the above obligation to be void, otherwise to remain in full force and virtue.

As witness our hands and seals, the day and date first above written.

JOHN L. SHAWHAN. [SEAL.]
JOHN SHAWHAN, SR., [L. S.]
By his attorney in fact JOHN H. HANNA,
C. REDMON, [L. L.]
By his attorney in fact, JOHN H. HANNA,
JOSEPH SHAWHAN, SR., [L. S.]
By his attorney in fact, JOHN H. HANNA.

Power of attorney from John L. Shawhan, senior, C. Redmon and Joseph Shawhan, senior, to John H. Hanna.

Whereas, John L. Shawhan and others have prayed an appeal to the Supreme Court of the United States, from a decree of affirmance rendered against them in favor of Perry Wherritt, by the circuit court of the United States, for the Kentucky district. Now, we do hereby authorize and empower John H. Hanna, clerk of said court, to sign our names to an appeal bond as the securities of said appellants, which shall be as binding on us as if the same had been executed by us in proper person.

Witness our hands and seals, this third day of December, 1844.

JOHN SHAWHAN, Sr., [SEAL.]
C. REDMON, [SEAL.]
JOSEPH SHAWHAN, Sr. [SEAL.]

Test: JOHN TRIMBLE.

UNITED STATES OF AMERICA, *8th circuit and district of Kentucky.*

I, John H. Hanna, clerk of the circuit court of the United States, in and for the circuit and district aforesaid, do certify, that the preceding two hundred and twenty-two pages, (this included,) contain a true and complete transcript of the record and proceedings had in the suit between the parties mentioned in the caption thereof, and also a correct index to the same.

In testimony whereof, I have hereto subscribed my name, and affixed the seal of said court, this eleventh day of January, A. D. eighteen hundred and forty-four, and in the sixty-ninth year of our independence. [SEAL.]

JOHN H. HANNA,
Clk C. C. K. D.

JOHN L. SHAWHAN, &c., appellants,
vs.
PERRY WHERRITT, appellee.

The appellants assign the following errors in the record and proceedings herein, to wit:

1. The circuit court erred in affirming the decree of the district court, and in decreeing costs against the appellants.

2. The circuit court ought to have reversed the decree of the district court, and dismissed the bill, on the following grounds, to wit:

1. The bill filed by the appellee in the district court is predicated entirely on the provisions of the English statutes, or the former bankrupt law of the United States, passed in 1800.

3. There is no equity in the bill filed in the court below, when tested by the late bankrupt law of 1841.

4. The bill alleges that the appellee is in possession of the tract of land in contest, and prays the court to quit him and the possession, and protect him against the process of the State court; and the decree directs John L. Shawhan to restore the possession.

5. The decree assumes a fact which is contradicted by the record. John L. Shawhan, &c., commenced their suit in the State court several months before Brandon became a bankrupt, and not afterwards, as is stated in the decree.

6. The principles assumed by the decree are expressly negatived by the bankrupt law of 1841, and can only be sustained by adopting the provisions of the English statutes, or the bankrupt law of 1800.

7. The decree directs the appellants to pay over to the appellee the amount of the sales of the slaves and personal estate of Brandon, when it appears from the record that the commissioner took notes for the